

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ESTATE OF RUTH FREIWALD, by personal  
representative, CHARLES FREIWALD,  
NATHAN RANDALL FETT, MELES LEE TEKLAY  
FETT, ZAFU ANN TEKLAY FETT, KALKIDAN  
MARIE SOLOMON FETT, MATTHEW JOHN FETT,  
SEYAYE ELLEN TEKLAY FETT, NATINAEL  
EARL SOLOMON FETT, BRANDON CHARLES FETT,

Plaintiffs,

and

DEAN HEALTH PLAN, INC.,  
PROGRESSIVE CASUALTY INSURANCE COMPANY,

Involuntary Plaintiffs,

-vs-

Case No. 18-CV-896

ADEYEMI FATOKI, M.D.; D. PETERS;  
JESSICA JONES, R.N.; EMILY BLOZINSKI,  
L.P.N.; CORRECT CARE SOLUTIONS, LLC;  
JOHN R. GOSSAGE, BROWN COUNTY,

Defendants.

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Video Examination of THOMAS D.

FOWLKES, M.D., taken at the instance of the  
Plaintiffs, under and pursuant to the Federal  
Rules of Civil Procedure, before Sarah A. Hart,  
RPR, RMR, CRR, and Notary Public in and for the  
State of Wisconsin, at Gutglass, Erickson,  
Larson, & Schneider, S.C., 735 North Water  
Street, Suite 1400, Milwaukee, Wisconsin, on  
January 22, 2019, commencing at 9:38 a.m. and  
concluding at 3:42 p.m.



Page 2	
1	A P P E A R A N C E S
2	
3	LAWTON & CATES, S.C., by
4	MR. DIXON GAHNZ
5	345 West Washington Avenue, Suite 201
6	P.O. Box 2965
7	Madison, Wisconsin 53701
8	appeared on behalf of Plaintiffs.
9	
10	GUTGLASS, ERICKSON, LARSON, & SCHNEIDER, S.C., by
11	MS. MARIA K. SCHNEIDER
12	735 North Water Street, Suite 1400
13	Milwaukee, Wisconsin 53202
14	appeared on behalf of Defendant
15	Adeyemi Fatoki, M.D.
16	
17	HEYL, ROYSTER, VOELKER & ALLEN, P.C., by
18	MR. SCOTT G. SALEMI
19	120 West State Street, 2nd Floor
20	Rockford, Illinois 61101
21	appeared on behalf of Defendants
22	Correct Care Solutions, LLC, Emily J.
23	Blozinski, L.P.N., and Jessica Jones, R.N.
24	
25	CRIVELLO CARLSON, S.C., by
	MS. AMY J. DOYLE
	710 North Plankinton Avenue, Suite 500
	Milwaukee, Wisconsin 53203
	appeared on behalf of Defendants
	D. Peters, John R. Gossage, and Brown County.
	* * * * *
	A L S O P R E S E N T
	Ms. Stephanie Olson, videographer
	Mr. Stuart Langdon, by telephone

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1	TRANSCRIPT OF PROCEEDINGS
2	(Exhibit No. 203 was marked.)
3	THE VIDEOGRAPHER: We are officially
4	on the record at 9:38 a.m. Today's date is
5	January 22nd, 2020. This is disc number one of
6	the deposition of Dr. Thomas Fowlkes.
7	This deposition is being taken in
8	the matter of the Estate of Ruth Freiwald
9	versus Fatoki, M.D. This matter is pending in
10	the United States District Court in the Eastern
11	District of Wisconsin and is case number
12	18-CV-896.
13	This deposition is taking place at
14	Gutglass, Erickson, Larson & Schneider, S.C.,
15	located at 735 Water Street, Suite 1400,
16	Milwaukee, Wisconsin, 53214.
17	My name is Stephanie Olson,
18	videographer. The court reporter is Sarah
19	Hart. Will counsel please state their
20	appearances and whom they represent, beginning
21	with plaintiffs' counsel, and then the reporter
22	will swear in the witness.
23	MR. GAHNZ: Good morning. Dixon
24	Gahnz on behalf of the plaintiffs.
25	MS. SCHNEIDER: Attorney Maria

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1	* * * * *
2	I N D E X
3	Examination By: Page
4	By Mr. Gahnz .....5
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6	Exhibits Identified: Page
7	Exhibit 203 - Binder of materials belonging to 6
8	Dr. Fowlkes
9	Exhibit 204 - Report prepared by Dr. Fowlkes 63
10	Exhibit 205 - Supplemental report prepared by 63
11	Dr. Fowlkes
12	Exhibit 206 - CIWA Assessment Scale for 111
13	Benzodiazepines
14	Exhibit 207 - PowerPoint presentation - 147
15	"Benzodiazepines: An Update"
16	Exhibit 208 - Article - "Prescribing and 160
17	Tapering Benzodiazepines"
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20	Previously Marked Exhibits: Page
21	Exhibit 46 - .....220
22	Exhibit 61 - .....206
23	Exhibit 66 - .....221
24	
25	Disposition of Original Exhibits:
	Exhibits 204 through 209, copy of Exhibit 203
	Attached to Original Transcript.
	Original Exhibit 203 was retained by Attorney
	Schneider.

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1	Schneider on behalf of Dr. Fatoki.
2	MR. SALEMI: Scott Salemi. I
3	represent defendants, Nurse Blozinski and Jones
4	and Correct Care Solutions.
5	MS. DOYLE: Attorney Amy Doyle on
6	behalf of Brown County, Sheriff Gossage, and
7	Officer Peters.
8	THOMAS D. FOWLKES, M.D., called as a
9	witness herein, having been first duly sworn on
10	oath, was examined and testified as follows:
11	EXAMINATION
12	BY MR. GAHNZ:
13	Q Good morning, Doctor. My name is Dixon Gahnz.
14	We met briefly off the record. I represent --
15	one of the attorneys representing the
16	plaintiffs in this matter.
17	You've been through this process
18	before; is that correct?
19	A I have.
20	Q The only thing that I'll remind you of is if
21	you don't understand a question that I've
22	asked, please ask me to rephrase it, repeat it,
23	and only answer those questions you understand.
24	Fair enough?
25	A I'll do.

Page 6

1 Q All right. Prior to going on the record, you  
2 handed me two binders of materials; is that  
3 correct?  
4 **A That is correct.**  
5 Q And these are the materials that you've brought  
6 with you from your file today?  
7 **A That's correct.**  
8 Q This is not your entire file, correct?  
9 **A That's correct -- it's not all the documents I**  
10 **was provided.**  
11 Q Okay. So why did you choose to bring the two  
12 binders?  
13 **A They were items which I either felt I might**  
14 **need to refer to today or in the case of some**  
15 **of the expert reports that I hadn't read prior**  
16 **to getting on the airplane so I wanted to be**  
17 **able to read them.**  
18 Q Okay. All right.  
19 So we've marked one of the binders  
20 as Exhibit 203, and I just want to go through  
21 briefly with you what's in that. And then I'm  
22 going to give it back to you, okay?  
23 There's a -- a handwritten billing  
24 statement, correct?  
25 **A That's correct.**

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1 that you've got several CCS procedures,  
2 correct?  
3 **A I'll take your word for it. I believe I have**  
4 **maybe two policies in there, two --**  
5 Q All right. You have the Medication  
6 Verification Policy which starts with CCS59,  
7 and you also have the No Missed Medication  
8 Policy; is that correct?  
9 **A That's correct.**  
10 Q All right. Then the next thing is you've got  
11 the references. Are these the articles that  
12 are cited to in your report?  
13 **A That's correct.**  
14 Q All right. And there are six articles that you  
15 cited, and there's complete copies of those in  
16 the -- in the file --  
17 **A That's correct.**  
18 Q -- in this binder? All right.  
19 The second binder I did not mark  
20 because it's things that everybody should have,  
21 but if you want it marked, we'll go ahead.  
22 So the first item that you've got is  
23 the plaintiff expert reports, which includes  
24 Dr. Greist and Dr. Greist's supplemental,  
25 correct?

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1 Q And is this up to date?  
2 **A It is up to date as of the submission of my**  
3 **supplemental report in the last couple of**  
4 **weeks.**  
5 Q All right. There's the notice of deposition?  
6 **A That's correct.**  
7 Q There is a calendar for October and November of  
8 '16; is that correct?  
9 **A That's correct.**  
10 Q Your Rule 26 report?  
11 **A That's correct.**  
12 Q Your supplemental report?  
13 **A That's correct.**  
14 Q You've got it marked as complaint, but it's the  
15 second amended complaint?  
16 **A That's right. The operative complaint to my**  
17 **understanding.**  
18 Q CCS records?  
19 **A That's correct.**  
20 Q Other records which would include the Huber  
21 preregistration, the Brown County Nicolet  
22 discharge summary?  
23 **A That's correct.**  
24 Q The next item that you've got in this binder is  
25 marked Policies and Procedures. And within

Page 9

1 **A Correct.**  
2 Q Mr. Stanley and Mr. Stanley's supplemental?  
3 **A Correct.**  
4 Q Nurse Ward and Nurse Ward's supplemental?  
5 **A Correct.**  
6 Q All right. Then the next set of documents  
7 are -- is noted Other Defense Experts, which  
8 you have a report of Dr. Joshua, Dr. Daniel,  
9 Nurse Pearson; is that correct?  
10 **A That's correct.**  
11 Q And then you have a tab noted Co. Defense  
12 Experts.  
13 **A I --**  
14 Q And then --  
15 **A I believe that's short for County.**  
16 Q I'm sorry.  
17 **A County Defense Experts.**  
18 Q Fair enough.  
19 And then under that tab you have  
20 Hayes, Carter, and Robbins; is that correct?  
21 **A That's correct.**  
22 Q And within the -- did you also include the  
23 supplemental reports of each of these witnesses  
24 if there is a supplemental?  
25 **A I will tell you that to the best of my**

Page 10

1 knowledge, no -- or to the best of my  
 2 knowledge, there was only one report of each  
 3 one of them.  
 4 Q Okay.  
 5 A I can't tell you with 100 percent certainty was  
 6 that the supplemental -- I believe it was the  
 7 original report, so I believe I do not have  
 8 supplementals.  
 9 Q All right.  
 10 A I can spend time trying to make certain that  
 11 it's not the supplementals if you would like.  
 12 Q No. We have things to do.  
 13 A Okay.  
 14 Q All right. What did you do to prepare for your  
 15 testimony today?  
 16 A In general, I reviewed these documents that I  
 17 have with me and the other documents that were  
 18 produced to me in discovery.  
 19 Q Anything else?  
 20 A I traveled here and met with Attorney Schneider  
 21 yesterday afternoon.  
 22 Q Did you meet with anybody else?  
 23 A No.  
 24 Q Did you do any independent research?  
 25 A Well, the -- well, of course, yes, I reviewed

Page 12

1 A Is your question specifically in preparation  
 2 for this deposition or in my entire work in  
 3 this case?  
 4 Q I'm just dealing right now with your work in  
 5 this case -- or your deposition preparation.  
 6 A No.  
 7 Q Okay. Did you look at any jail records?  
 8 A No.  
 9 MS. SCHNEIDER: For all of these  
 10 questions, Dixon, you're just talking about  
 11 depo prep?  
 12 BY MR. GAHNZ:  
 13 Q Everything is -- the umbrella is what did you  
 14 do in preparation for your deposition today.  
 15 Do you understand that?  
 16 A Not exactly.  
 17 Q Okay. What part of that don't you understand?  
 18 A Well, for instance, I prepared a supplemental  
 19 report approximately two weeks ago.  
 20 Q Okay.  
 21 A So in preparing that report I reviewed jail  
 22 records, I reviewed jail policies and  
 23 procedures, I reviewed medical records,  
 24 research of the other plaintiffs' experts. So  
 25 that was all done two weeks ago. I would

Page 11

1 those documents that I had disclosed in my  
 2 report.  
 3 Q Okay. Anything else?  
 4 A No. I mean, I don't know -- I don't exactly  
 5 know what you mean. I reviewed the documents  
 6 that -- the expert disclosure, the documents  
 7 that were in there, and that included some  
 8 things such as review -- I've reviewed the  
 9 NCCHC Guidelines for Jail Standards.  
 10 Q Okay.  
 11 A And any -- and potentially articles that were  
 12 disclosed by other experts.  
 13 Q And these are things that you did in  
 14 preparation for your testimony today?  
 15 A Well, I prepared a supplemental report a couple  
 16 of weeks ago, so some of that preparation was  
 17 done during that time.  
 18 Q All right. So which particular NCCHC -- NCCHC  
 19 standards did you review?  
 20 A The entire policy or specifically any that were  
 21 addressed in any of the experts' reports.  
 22 Q And why did you do that?  
 23 A Because the other experts mentioned them.  
 24 Q Did you review any medical records other than  
 25 what's contained in Exhibit 203?

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1 consider that in preparation for this  
 2 deposition for today because I remember it.  
 3 Q Okay.  
 4 A But now, as far as yesterday did I review  
 5 any -- or, you know, in the last two days have  
 6 I reviewed any policies -- other policies and  
 7 procedures, no.  
 8 So I don't understand what you mean  
 9 by "in preparation for this deposition today."  
 10 I mean, I did -- I did a good bit of work  
 11 preparing my Rule 26 report, preparing my  
 12 supplemental report. All of those have  
 13 prepared me for my deposition today.  
 14 Q Have you listed in your supplemental report all  
 15 of the items that you reviewed?  
 16 A Yes.  
 17 Q Other than the literature that was contained in  
 18 Exhibit 203 and the articles that you may have  
 19 read referenced by other experts, did you do  
 20 any additional literature review?  
 21 A No.  
 22 Q Did you discuss any of the issues in this case  
 23 with any of the other experts?  
 24 A No.  
 25 Q At any time?

Page 14

1 A No.

2 Q Did you meet or discuss any of the issues in

3 this case with any other colleagues?

4 A No.

5 Q As part of your materials you have your resumé;

6 is that correct?

7 A **It is attached to my Rule 26 report, yes.**

8 Q Do you want to pull that up?

9 A **I have it.**

10 Q And my copy is marked "Last updated May 22,

11 2019."

12 Is that the most up-to-date version?

13 A **No. The one that was attached to my Rule 26**

14 **report and which is also my current one was**

15 **updated October the 8th, 2019.**

16 Q All right. Do you have a resumé that you post

17 online?

18 A **I believe that my CV is available on my**

19 **website, yes.**

20 Q All right. And if somebody is to copy that

21 from the online, is it going to say "Expert,

22 not retained"?

23 A **I wouldn't doubt that it would.**

24 Q Okay. And then after you've been hired, then

25 you take that watermark off and you provide

Page 16

1 of this.

2 So let's -- the summary of your

3 qualifications it indicates that you're a

4 seasoned physician. What do you mean by a

5 seasoned physician?

6 A **I have been practicing for over 20 years, and I**

7 **have begun to develop some gray hair.**

8 Q It indicates that you are board-certified in

9 emergency medicine and addiction medicine; is

10 that correct?

11 A **That is correct.**

12 Q When was the last time that you updated those

13 certifications?

14 A **For the emergency medicine I believe it was**

15 **2010. And for addiction medicine -- I'm sorry,**

16 **for addiction medicine I believe it was 2010,**

17 **and for emergency medicine 2013, I believe.**

18 Q Okay. Where are you licensed to practice

19 medicine?

20 A **The state of Mississippi.**

21 Q Anywhere else?

22 A **Not at this time.**

23 Q Have you had your license limited in any way by

24 the state of Mississippi?

25 A **No.**

Page 15

1 that resumé to other folks?

2 A **Well, so, for instance, when it's attached to a**

3 **Rule 26 report, it doesn't have a watermark,**

4 **yes, that's correct.**

5 Q All right. So how come it -- what difference

6 does it make whether or not you've been

7 retained or not if one wants to look at your

8 CV?

9 A **Well, so I wouldn't want for someone to**

10 **download my CV and say, you know, I expect this**

11 **expert is going to say this when I haven't**

12 **even -- I didn't provided it to them. So the**

13 **public can download a document off of my**

14 **website. I don't want people to misuse it and**

15 **indicate that they have retained me if they**

16 **have not.**

17 Q All right. So with respect to the resumé that

18 was attached to the Rule 26 report, other than

19 the watermark are there any differences between

20 the May 22nd and the October 2019? Did you

21 update it?

22 A **I did update it. I don't recall if there are**

23 **any differences. If you would like me to**

24 **compare, I would be glad to.**

25 Q No, that's all right. I think we can work off

Page 17

1 Q Have you had -- do you have hospital privileges

2 anywhere?

3 A **No.**

4 Q Have you ever?

5 A **Well, in general, emergency physicians don't**

6 **have hospital privileges in the typical sense,**

7 **in other words, admitting privileges.**

8 **Emergency physicians typically work in an**

9 **emergency room and have privileges for that,**

10 **yes.**

11 Q Okay. And are you currently working in any

12 emergency rooms?

13 A **Not at this time.**

14 Q When is the last time you worked in an

15 emergency room?

16 A **It has been approximately ten or more -- ten**

17 **years or so before -- since I've worked in an**

18 **emergency department. I've worked in urgent**

19 **cares since that time.**

20 Q When was the last urgent care you worked at?

21 A **I owned an urgent care for -- just a minute. I**

22 **owned a primary care and urgent care clinic**

23 **from 2009 through 2017, and presently I own a**

24 **different urgent care. So I own an urgent care**

25 **now.**



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1 Q Where are these located?

2 A **Oxford, Mississippi, and Cleveland,**

3 **Mississippi.**

4 Q Why did you stop -- what happened to the urgent

5 care center that you owned between 2009 and

6 2017?

7 A **I turned it over to the nurse -- to nurse**

8 **practitioners who were working with me there.**

9 Q And when did you open the new urgent care

10 center?

11 A **2019.**

12 Q How come?

13 A **Because that town needed an urgent care center,**

14 **and I was approached and I'm one of the**

15 **co-owners of it.**

16 Q The next paragraph starts with "Accomplished

17 expert witness with more than ten years'

18 experience at both deposition and trial in

19 state and federal courts."

20 How many cases have you testified in

21 court on?

22 A **My -- my federal case list is attached, so...**

23 Q Okay. But the question was, how many times

24 have you testified in court?

25 A **In my career?**

Page 20

1 of addiction, drug testing interpretation and

2 effects of substances, urgent care, and

3 emergency medicine. Is that list that you

4 provided accurate today?

5 A **It is.**

6 Q Okay.

7 A **I mean, those are not necessarily all my areas**

8 **of expertise, but...**

9 Q Well, how come you left certain areas off your

10 resumé?

11 A **Because I don't -- in other words, this is the**

12 **kind -- this is the type of work -- type of**

13 **cases that I take.**

14 Q Do you take type -- other types of work that

15 aren't listed on the --

16 A **No. That's what I'm saying. I limit my expert**

17 **witness work to this.**

18 Q Okay.

19 A **I was saying I may have expertise in other**

20 **areas, but I don't hold myself out as an**

21 **expert. I'm not looking for those type of**

22 **cases.**

23 Q Okay. It indicates that you're a certified

24 correctional health care professional. And

25 that certification was July 17th to June --

Page 19

1 Q As an expert witness.

2 A **But -- for all years. Countless. I can't tell**

3 **you.**

4 Q Okay.

5 A **But most of them were not -- not as a paid**

6 **expert witness. Most of them were for other**

7 **purposes. As an expert witness, but...**

8 Q As a retained expert how many times have you

9 testified at trial?

10 A **I can't give you an exact number, but I would**

11 **say between five and ten probably.**

12 Q It indicates -- you indicate that you're an

13 accomplished expert witness.

14 What does that mean?

15 A **I take my work seriously and I have been**

16 **retained in a number of cases.**

17 Q Okay. I mean, have you been recognized by any

18 agency, any accrediting body, any awards as

19 having the specific distinction as an expert?

20 A **Not that I'm aware of.**

21 Q All right. You list your areas of expertise;

22 is that right?

23 A **That's correct.**

24 Q And does this -- I have correctional health

25 care, deaths in custody, drug abuse and effects

Page 21

1 July of '17 to June of 2020.

2 What is a certified correctional

3 health care professional?

4 A **I would point out that it also has a dash**

5 **physician. So there -- which is different.**

6 **Certified correctional health care professional**

7 **is a level of certification that is issued by**

8 **the National Commission On Correctional**

9 **Healthcare. And one can demonstrate knowledge**

10 **in and experience with the standards -- NCHC**

11 **standards there and can take a test and can**

12 **become a certified correctional health care**

13 **professional, in other words, demonstrating**

14 **knowledge and expertise on those standards.**

15 Q Okay.

16 A **You can become just a plain -- a CCHP without**

17 **any dash, or you can take advanced-level**

18 **certifications which have additional knowledge**

19 **requirements. And so the physician one is the**

20 **one that is the most advanced for physicians to**

21 **take. So it would be in addition to the**

22 **standards knowledge of treating conditions that**

23 **are common in a jail setting, mental health,**

24 **infectious disease, public health, those type**

25 **of things.**

Page 22

1 Q Okay.

2 A **There -- it's the closest thing that there is**

3 **to a board certification in correctional health**

4 **care.**

5 Q All right. Your professional experience, the

6 first thing that you have listed is that you

7 were a medical director at Lafayette County,

8 Mississippi, Detention Center.

9 Is that a jail?

10 A **It is.**

11 Q All right. It indicates that it has local and

12 federal detainees?

13 A **Correct.**

14 Q Does that mean that it has people only that

15 have not been sentenced, or does it got people

16 that have been detained and are serving

17 sentences?

18 A **So jails in general -- it does have people who**

19 **were sentenced.**

20 Q Okay.

21 A **In general, county jails mainly hold pretrial**

22 **detainees; they may also hold convicted persons**

23 **who are serving short sentences, you know, 30,**

24 **45 days, up to a year. Normally if you've been**

25 **convicted of a felony and are serving more than**

Page 24

1 working as an independent contractor; is that

2 correct?

3 A **Yes. My practice was an independent**

4 **contractor. So, in other words, I provided the**

5 **nurses, the pharmaceutical services, radiology**

6 **services, lab services. They were all provided**

7 **by me, and I was paid a per capita rate, in**

8 **other words, an all-inclusive rate to provide**

9 **those services.**

10 Q So between '98 and 2015 your role at the -- as

11 the medical director at Lafayette County would

12 be similar to the CCS role in Brown County in

13 this case?

14 A **That is correct.**

15 Q Okay. How many nurses did you employ?

16 A **I had one full-time -- I have now and have for**

17 **a long time had one full-time and two part-time**

18 **nurse positions. My two part-time positions**

19 **are occupied by one person, so I guess**

20 **technically I employ two nurses, but I have**

21 **three positions.**

22 Q Other than you --

23 A **I --**

24 Q I'm sorry.

25 A **I also have a nurse practitioner. I'm sorry, I**

Page 23

1 **one year, you're remanded to the state**

2 **Department of Corrections and you would not be**

3 **held in the jail typically.**

4 Q And are you speaking of Mississippi, Wisconsin,

5 nationwide?

6 A **That's pretty much a nationwide -- pretty much**

7 **a nationwide practice.**

8 **In addition, the federal detainees**

9 **that I have, the process is slow. And so I may**

10 **keep federal detainees for up to a year after**

11 **they have been sentenced to the Bureau of**

12 **Prisons -- before they're transferred to the**

13 **Bureau of Prisons.**

14 Q So your job as the medical director at the

15 Lafayette County Detention Center, what does

16 that include?

17 A **That includes the provision of health care to**

18 **the patients under my care. That includes**

19 **supervising the other health care employees who**

20 **work there. That includes interacting with the**

21 **administration on, you know, matters that are**

22 **important to the administration, policies,**

23 **procedures, et cetera. It involves training of**

24 **both the nursing staff and the security staff.**

25 Q It indicates here that from '98 to '15 you were

Page 25

1 **wasn't counting them amongst the nurses. I was**

2 **counting the nurse practitioner as a provider,**

3 **but...**

4 Q All right. So there's you, a nurse

5 practitioner, two nurses. Any other health

6 care staff that you employed between '98 and

7 '15?

8 A **Yes. A paramedic between those years.**

9 Q I'm sorry, a paramedic?

10 A **A paramedic does not work for me now but did in**

11 **those years.**

12 Q Did he work for you at the Lafayette County

13 Detention Center?

14 A **Correct.**

15 Q Currently you're an employee of Lafayette

16 County, Mississippi?

17 A **That is correct.**

18 Q And your job title is a medical director?

19 A **That is correct.**

20 Q Have your job duties changed since you became

21 an employee?

22 A **In general I would say no. Obviously, I don't**

23 **directly provide the pharmacy services now; the**

24 **County contracts with somebody. So I oversee**

25 **those. It's the same job that we did before,**

Page 26

**1 in other words, but rather than me being the**  
**2 one that awards the pharmacy contract, for**  
**3 instance, now that's a County function and I**  
**4 just oversee it.**  
 5 Q Okay. So in your role as the medical director  
 6 at Lafayette County, have there been inmate  
 7 lawsuits against you?  
 8 A No.  
 9 Q Against the County?  
 10 A I am aware of one lawsuit against the County in  
 11 my 20 years, which was not a medical lawsuit.  
 12 Q What about either of the nurses or the nurse  
 13 practitioner?  
 14 A No.  
 15 Q So do you consider it a conflict of interest to  
 16 work as a medical director at a jail and  
 17 provide expert opinions as to the standards  
 18 related to health services at a jail?  
 19 A Absolutely not.  
 20 Q Okay. Do you take into account -- the fact  
 21 that you're testifying in the depositions and  
 22 your report may be available to the public, do  
 23 you take that into account as how it may impact  
 24 the provision of services and the -- in a  
 25 lawsuit that could be brought against you as

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**1 receives federal money for research, must have**  
**2 an institutional review board that reviews and**  
**3 approves research involving human subjects.**  
**4 And if any of that research is going to involve**  
**5 inmates or prisoners, then there is special**  
**6 federal requirements that someone be appointed**  
**7 who has special knowledge of inmates and so can**  
**8 look out for their interests as it relates to**  
**9 research projects that involve them. And that**  
**10 is a volunteer role I have done for the last 13**  
**11 years.**  
 12 Q So if someone at the University of Mississippi  
 13 wants to do research on jail inmates, that's  
 14 what we're talking about?  
 15 A Not just jail inmates, but prisoner -- any kind  
 16 of prisoners anywhere.  
 17 Q And your job is to advocate for the prisoners  
 18 such that any research is done appropriately?  
 19 A That's correct.  
 20 Q Anything else?  
 21 A No. That's the -- I mean, that's the gist of  
 22 the role -- of my role.  
 23 Q All right. You also -- what is the name of the  
 24 urgent care center that you currently own? Is  
 25 that listed on your resumé?

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1 the director of the Lafayette County Medical --  
 2 Lafayette County Detention Center?  
 3 MS. SCHNEIDER: Object to the form.  
 4 Go ahead.  
 5 THE WITNESS: I'm not sure that I  
 6 even understand what you're trying to ask. I  
 7 guess you're asking if I -- if I understand you  
 8 correct, you're asking do I -- do I take it  
 9 into account or change my -- I take that to  
 10 mean do I change my opinions as a result of  
 11 that. And no, I do not. My opinions are what  
 12 they are and they're available to who they are,  
 13 so I don't know of any effects that they do or  
 14 don't have, but I'm not concerned about that if  
 15 that's what you're asking. That does not play  
 16 into my formation of opinions.  
 17 BY MR. GAHNZ:  
 18 Q You also list here that you're a prisoner  
 19 advocate member of the Institutional Review  
 20 Board, Division of Research, Integrity, and  
 21 Compliance at the University of Mississippi.  
 22 And that was from 2007 to present. What is  
 23 that?  
 24 A That is correct. The University of  
 25 Mississippi, like any institution which

Page 29

**1 A It is. At least it's listed on the one that**  
**2 was with my Rule 26 report. Express Care of**  
**3 Mississippi.**  
 4 Q All right. So you're a co-owner and physician  
 5 at Right Track Medical Group, an outpatient  
 6 provider of mental health services in northern  
 7 Mississippi, correct?  
 8 A That is correct.  
 9 Q And you've been doing that since 2018?  
 10 A That is correct.  
 11 Q What is your role at Right Track Medical Group?  
 12 A It is primarily an administrative role at this  
 13 time.  
 14 Q Meaning?  
 15 A Meaning I'm the CFO.  
 16 Q Okay. Do you see any patients there?  
 17 A At this time I do not.  
 18 Q Have you ever?  
 19 A No.  
 20 Q Okay.  
 21 A The reason I'm saying that is right now we  
 22 don't provide addiction services, substance  
 23 abuse services. We probably will in the  
 24 future, and I will -- I will likely see  
 25 substance abuse patients at that practice, but



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1 **I am not at this time.**  
 2 Q Okay. The next page indicates that you're the  
 3 sole shareholder of Thomas Fowlkes, M.D., P.A.,  
 4 a contractor of emergency physician services to  
 5 acute care facilities and emergency  
 6 medicine/EMS consultant.  
 7 What is that?  
 8 A **So P.A. standards for professional association.**  
 9 **So it's just the corporation that a physician**  
 10 **has. It's been in existence since 1992. When**  
 11 **I have done work in urgent cares or emergency**  
 12 **departments, it is usually as an independent**  
 13 **contractor through that corporation. That was**  
 14 **the corporation that provided health care**  
 15 **services to the jail for those 17 years. And**  
 16 **now it's the corporation that I do consultation**  
 17 **and expert witness work through.**  
 18 Q Okay. You are also a co-owner and chief  
 19 medical officer of the Oxford Center between  
 20 2011, 2015; is that correct?  
 21 A **That is correct.**  
 22 Q What is the Oxford Center?  
 23 A **A comprehensive substance abuse treatment**  
 24 **facility. So we had detox services,**  
 25 **residential rehabilitation, intensive**

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1 services that would be provided by a hospital?  
 2 A **So an example would be that a person who is**  
 3 **having alcohol detox in most cases can be**  
 4 **treated within a residential detox facility**  
 5 **such as we had. But if, for instance, they**  
 6 **became delirious and required to be on a**  
 7 **ventilator, for instance, we -- or required**  
 8 **intensive care unit level of services,**  
 9 **intravenous, medications, we do not provide**  
 10 **those. We would send the person to an acute**  
 11 **care medical hospital.**  
 12 Q Okay. Were there types of detox if a person  
 13 came to you and was detoxing off of a  
 14 particular substance that you would not take  
 15 that person, that they would be sent  
 16 immediately to the hospital?  
 17 A **No.**  
 18 Q So it was the -- the determining factor as to  
 19 whether somebody was sent to the hospital was  
 20 the level of symptoms that the person was  
 21 exhibiting?  
 22 A **Well, our ability to take care of them. In**  
 23 **other words, if we were able to manage their**  
 24 **detox with -- with the treatment services we**  
 25 **were able to provide, then we would do that.**

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1 **outpatient, and all levels of substance abuse**  
 2 **treatment.**  
 3 Q There's an acronym CARF. What is that?  
 4 A **That is an accrediting organization which**  
 5 **accredits rehab facilities. I believe it**  
 6 **stands for the Commission an Accreditation of**  
 7 **Rehab Facilities. Don't hold me to those**  
 8 **letters, but I believe that's correct.**  
 9 Q What type of detox did you -- were you involved  
 10 with at the Oxford Center?  
 11 A **Well, all types of detox. It is not a -- it is**  
 12 **not and was not a licensed hospital. So, in**  
 13 **other words, if a person required detox**  
 14 **services, they could only be provided in, say,**  
 15 **a hospital or intensive care unit setting. We**  
 16 **did not provide those. But it is what is**  
 17 **called residential detox from opiates, alcohol,**  
 18 **benzodiazepines.**  
 19 Q I don't understand that answer. So it says  
 20 it's a 76-bed CARF accredited detox residential  
 21 and outpatient substance abuse treatment  
 22 facility.  
 23 What is the difference between the  
 24 services that you provided as far as detox as  
 25 the co-owner of the Oxford Center and those

Page 33

1 **If they required a higher level of care such as**  
 2 **cardiac monitoring or some other level of care**  
 3 **that we couldn't provide, we would send them to**  
 4 **a hospital.**  
 5 Q So I'm trying to figure out how that's any  
 6 different than what I just said. I mean, we're  
 7 going to be here for quite a while today. And  
 8 if we can't agree on basic terms, then it seems  
 9 like we're going to --  
 10 So when I said the determiner as to  
 11 whether somebody is sent to the hospital or not  
 12 is based on the symptoms or the severity of the  
 13 symptoms, what is your disagreement with that  
 14 statement?  
 15 I just want to make sure that we can  
 16 get on the same page so we can get done before  
 17 4:30.  
 18 A **Well, patients --**  
 19 MS. SCHNEIDER: Argumentative. But  
 20 go ahead.  
 21 **THE WITNESS: Patients can have**  
 22 **severe symptoms and yet not require high level**  
 23 **of medical intervention. On the other hand,**  
 24 **patients can be completely asymptomatic and not**  
 25 **be breathing and need a very high level of**

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1 **care. So it's not based upon their level of**  
 2 **symptoms but upon their level of care which**  
 3 **they require. That's the difference.**  
 4 BY MR. GAHNZ:  
 5 Q So in -- is it your position that a patient  
 6 that's not breathing is -- that's a mild  
 7 symptom?  
 8 **A That's --**  
 9 MS. SCHNEIDER: Object to form.  
 10 **THE WITNESS: That's exactly not**  
 11 **what I -- that's what I just did not say.**  
 12 **I said that a person cannot have**  
 13 **symptoms --**  
 14 BY MR. GAHNZ:  
 15 Q And not be breathing.  
 16 **A Symptoms or complaints. So that might be a**  
 17 **sign, that they weren't breathing and need to**  
 18 **go to the hospital. My point is that -- or the**  
 19 **reason -- the difference is that it's not what**  
 20 **the person's complaint is but what level of**  
 21 **service I'm able to provide for them. So those**  
 22 **are different things.**  
 23 **I'm doing my best to answer your**  
 24 **questions.**  
 25 Q The next section of your resumé is your

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1 **A That is correct.**  
 2 Q Is that the sum total of your education after  
 3 high school?  
 4 **A To the best that I understand your question,**  
 5 **yes.**  
 6 Q Well, did you go somewhere and get your MBA?  
 7 **A No.**  
 8 Q Okay. Did you go somewhere and get an  
 9 engineering degree?  
 10 **A No. But I'm quite certain that I -- during**  
 11 **medical school I went to -- did electives in**  
 12 **other places; same with the University of**  
 13 **Pittsburgh. So, I mean, it's a fair**  
 14 **representation of a summary of my -- it may not**  
 15 **list every course that I took or every -- every**  
 16 **elective that I engaged in, but yes.**  
 17 Q Does it accurately list all of the degrees that  
 18 you hold?  
 19 **A It does.**  
 20 Q All right. Where did you go to nursing school?  
 21 **A I did not go to nursing school.**  
 22 Q Where did you get your L.P.N. license?  
 23 **A I do not have an L.P.N. license.**  
 24 Q Where did you go for correctional training?  
 25 **A For correctional training?**

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1 education; is that correct?  
 2 **A That's correct.**  
 3 Q So you started out at the University of the  
 4 South in Tennessee; is that right?  
 5 **A That's correct.**  
 6 Q And did you get -- that was a community -- was  
 7 that a two-year school?  
 8 **A No.**  
 9 Q What was that?  
 10 **A It is a liberal arts four-year college.**  
 11 Q All right. Did you graduate from there?  
 12 **A I did not.**  
 13 Q All right. Then what did you do between  
 14 '82 and '85?  
 15 **A I went to school at Rhodes College in Memphis,**  
 16 **Tennessee.**  
 17 Q Okay. And at that point you got a degree in  
 18 psychobiology; is that right?  
 19 **A That is correct.**  
 20 Q Then you went to medical school in Tennessee;  
 21 is that right?  
 22 **A That is correct.**  
 23 Q And then from there you went to the University  
 24 of Pittsburgh for a residency in emergency  
 25 medicine; is that right?

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1 Q As a correctional officer.  
 2 **A I have taught correctional officer training**  
 3 **courses. I am not a certified correctional**  
 4 **officer, but I teach those certification**  
 5 **courses. I instruct.**  
 6 Q You teach the medical aspect of it, correct?  
 7 **A That is correct.**  
 8 Q What education do you have with respect to the  
 9 formulation of jail policy?  
 10 **A What education? I have 20 years' experience.**  
 11 **I don't -- I'm not aware of any formal**  
 12 **education that one can obtain -- achieve for**  
 13 **that.**  
 14 Q Do you have any degrees related to correctional  
 15 sciences?  
 16 **A Say that again.**  
 17 Q Have you attended a police academy?  
 18 **A I have not.**  
 19 Q Have you attended a correctional officer  
 20 seminar?  
 21 **A I have.**  
 22 Q Related to what?  
 23 **A Correctional officer training.**  
 24 Q In what area?  
 25 **A Basic detention officer training.**

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1 Q Describe that for me.

2 A **The State of Mississippi has a -- I believe**

3 **it's an 80-hour training course. I have taught**

4 **several modules of that and attended several**

5 **other modules that I didn't teach.**

6 Q Okay. What modules did you teach?

7 A **The ones as it relates to medical services**

8 **within a jail, health services within a jail,**

9 **mental health services within a jail, suicide**

10 **prevention. I believe -- I'm not certain**

11 **about -- I helped teach a portion on chemical**

12 **use of restraint -- or the use of force, a**

13 **module on chemical -- chemicals in**

14 **decontamination.**

15 Q What courses -- what modules did you attend?

16 A **I don't recall the specifics.**

17 Q In the areas of expertise that you include on

18 page 1 you don't hold yourself out as a jail

19 policy expert, correct?

20 A **I disagree.**

21 Q You are a jail policy expert?

22 A **As it relates to correctional health care, yes.**

23 Q Okay. So you're a medical expert, a jail

24 policy expert, a nursing expert, and a licensed

25 practical nurse expert. Is that accurate?

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1 **opinions.**

2 Q Okay. How is that different than being

3 critical of her?

4 A **I thought you -- because -- I thought you were**

5 **talking about a defendant in this case, and**

6 **then I realized you're talking about an expert.**

7 **So I don't believe she breached the standard of**

8 **care. There's not -- I'm not critical of her**

9 **actions; I'm only disagreeing with her report**

10 **and her opinions. So I agree -- might agree**

11 **with some, might disagree with some. I just**

12 **stated my agreements and disagreements.**

13 Q One of the defendants in this case is an

14 L.P.N., correct?

15 A **That's correct.**

16 Q And you've offered opinions that the L.P.N.

17 acted within the standard of care?

18 A **That was not amongst the scope of what I was**

19 **asked to look at, but yes, that is my opinion.**

20 Q All right. So when we get to trial in this

21 case, is anybody going to -- if anybody asks

22 you those questions, are you going to answer

23 them with respect to the standard of care that

24 an L.P.N. should be held to in this case?

25 A **If I am asked --**

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1 A **That's your characterization, not mine.**

2 Q Well, are you offering opinions in all four of

3 those disciplines here today as an expert

4 opinion -- as an expert retained?

5 A **No. I am offering opinions on correctional**

6 **health care. That may include the actions of**

7 **physicians, other health care providers,**

8 **nurses, and correctional officers as it relates**

9 **to the delivery of the -- assessment and**

10 **delivery of emergency care to inmates. And**

11 **obviously of necessity, those also involve**

12 **policies and procedures relating to each one of**

13 **those.**

14 Q All right. So you've offered opinions that are

15 critical of Nurse Ward, correct?

16 A **I'm sorry, of?**

17 Q You've offered opinions in this case that are

18 critical of Nurse Ward, correct?

19 MS. SCHNEIDER: Object to the form

20 of that question.

21 **THE WITNESS: No.**

22 BY MR. GAHNZ:

23 Q You agree with the assessment that Nurse Ward

24 has provided in her reports?

25 A **No, I -- I disagree with a number of her**

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1 MR. SALEMI: Hold on. Hold on. I

2 object to form. You just asked him and he just

3 said she did comply with the standard of care.

4 So I object to form. He can be --

5 BY MR. GAHNZ:

6 Q Did you understand the question, sir?

7 MR. SALEMI: He can be asked that

8 question, and he will be asked that question.

9 **THE WITNESS: I did understand, and**

10 **yes, I will give that opinion.**

11 BY MR. GAHNZ:

12 Q All right. So my confusion is, how is it that

13 you're not holding your -- you're going to

14 offer expert opinions that the L.P.N. in this

15 case met the standard of care. Isn't that the

16 role of an expert opinion who holds himself out

17 as an expert in L.P.N.?

18 MS. SCHNEIDER: Object to the form.

19 MR. SALEMI: Yeah, object to form.

20 **THE WITNESS: I don't know how to**

21 **answer that question. I'm an expert in**

22 **correctional health care and all the levels --**

23 **I have hired, trained, and supervised all level**

24 **of health care professionals within a jail**

25 **setting, and I believe that I am qualified to**

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1 **offer opinions about those actions.**  
 2 BY MR. GAHNZ:  
 3 Q Have you ever worked as an L.P.N.?  
 4 A **No.**  
 5 Q Have you ever worked as a registered nurse?  
 6 A **No.**  
 7 Q Do you have --  
 8 A **I have supervised both.**  
 9 Q Do you have the ability to report any of them  
 10 to a disciplinary board?  
 11 A **Yes.**  
 12 Q Let me break that question out.  
 13 Do you have the ability to bring  
 14 charges against an L.P.N.?  
 15 A **I don't understand the question.**  
 16 Q Well, you did when you were asked the question  
 17 by the attorney from Benton, Arkansas, last  
 18 year. Do you remember going through that  
 19 deposition? He was a colorful fellow.  
 20 MS. SCHNEIDER: Argumentative. Is  
 21 there a question in there?  
 22 BY MR. GAHNZ:  
 23 Q Do you remember being deposed in the case of  
 24 Marziale versus Correct Care Solutions?  
 25 A **I do.**

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1 your answer?  
 2 A **I answered your question the best that I could.**  
 3 **If you would like to ask me another question,**  
 4 **I'll be glad to answer it.**  
 5 Q When you're retained as an expert, does it make  
 6 any difference in terms of how you formulate  
 7 your opinions as to whether it's the  
 8 plaintiff's attorney that's retained you or the  
 9 defense attorney that's retained you?  
 10 A **Your question was, does it make any --**  
 11 **Would you repeat the question,**  
 12 **please, ma'am.**  
 13 (Last question read.)  
 14 **THE WITNESS: No. I have a standard**  
 15 **protocol that I use when I am reviewing cases**  
 16 **no matter which attorney has retained me.**  
 17 BY MR. GAHNZ:  
 18 Q Tell me that protocol, please.  
 19 A **Well, I request the pertinent medical records;**  
 20 **I request any prior medical records on the**  
 21 **person in question, the plaintiff.**  
 22 Q Um-hmm. Okay.  
 23 A **If I am asked to opine about policies and**  
 24 **procedures, I ask for the policies and**  
 25 **procedures. Sometimes I am, sometimes I am**

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1 Q And it was a 300-some-odd page deposition?  
 2 A **I remember.**  
 3 Q All right. And do you remember being asked  
 4 questions with respect to staying in your lane  
 5 as to whether or not you could opine on the  
 6 L.P.N. standard of care?  
 7 A **I do not recall specifically. If you would**  
 8 **like to show me, I'll see if it refreshes my**  
 9 **memory.**  
 10 Q Well, let's just do it this way: When you gave  
 11 this deposition, you were under oath, right?  
 12 A **I was.**  
 13 Q And you gave the answers that were truthful to  
 14 the best of your knowledge?  
 15 A **I answered the questions to the best of my**  
 16 **ability, yes.**  
 17 Q Well, are you saying that you weren't truthful?  
 18 MS. SCHNEIDER: That misstates his  
 19 testimony.  
 20 MR. GAHNZ: Do you want to read back  
 21 the question that I asked and the answer that  
 22 he gave?  
 23 (Requested portion read.)  
 24 BY MR. GAHNZ:  
 25 Q My question: Why did you omit truthful from

Page 45

1 **not. I believe I may have said prior medical**  
 2 **records, but I certainly ask for those. I ask**  
 3 **for the operative complaint.**  
 4 Q Okay.  
 5 A **And I ask for any other items that have been**  
 6 **produced in discovery to that point.**  
 7 Q Okay.  
 8 A **I formulate my initial opinions.**  
 9 Q I'm sorry?  
 10 A **I formulate my initial -- I review those**  
 11 **records.**  
 12 Q Okay.  
 13 A **I formulate my initial opinions, discuss them**  
 14 **with the attorney.**  
 15 Q Okay. The next part of your resumé provides  
 16 publications. And it looks to me like you have  
 17 three publications in your career; is that  
 18 right?  
 19 A **That would be correct.**  
 20 Q Are any of these peer-reviewed?  
 21 A **The answer to that question is I don't recall.**  
 22 **They're a long time ago and I don't recall.**  
 23 Q Okay. Are you a member of any peer-reviewing  
 24 committee?  
 25 A **To the best --**



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1 Q Let me rephrase the question if it's a little  
2 unclear.  
3 **A It is.**  
4 Q You understand -- tell me what the process of  
5 peer review is.  
6 **A Well, my understanding is that publications**  
7 **which are peer-reviewed have a process and/or a**  
8 **committee by which articles which are submitted**  
9 **for publication are reviewed by that committee**  
10 **prior to -- prior to publication to ensure lack**  
11 **of bias and scientific validity.**  
12 Q Have you been on a peer-review committee?  
13 **A Not since my residency.**  
14 Q And have you written any textbook chapters?  
15 **A I believe at least two of those publications**  
16 **are textbook chapters.**  
17 Q Which two?  
18 **A I believe that would be the first two.**  
19 Q Okay. Have you written any articles with  
20 respect to correctional health care?  
21 **A No.**  
22 Q Have you been on any peer-review committees  
23 with respect to correctional health care?  
24 **A Not to the best of my understanding.**  
25 Q Okay. In any circumstance have you reviewed

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1 **A I have a board certification in emergency**  
2 **medicine, a board certification in addiction**  
3 **medicine, and a bachelor's degree in**  
4 **psychobiology.**  
5 Q Are you a psychiatrist?  
6 **A I am not.**  
7 Q Are you a psychologist?  
8 **A I am not.**  
9 Q The next part of your resumé deals with  
10 presentations that you have given over the  
11 years; is that correct?  
12 **A That's correct.**  
13 Q Are there any of the presentations that are  
14 contained on pages 3, 4, and 5 that are  
15 relevant to any of the issues that you gave  
16 opinions on in this case?  
17 **A Yes.**  
18 Q Which ones?  
19 **A I believe a number of them.**  
20 Q All right. Why don't we start at page 3, and  
21 you tell me which ones are --  
22 MS. SCHNEIDER: Do you mean page 4?  
23 **THE WITNESS: Yeah, mine is page 4**  
24 **is where mine starts.**  
25

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1 any article with respect to correctional health  
2 care prior to its publication?  
3 **A So I believe that's a restatement of the last**  
4 **question. I don't believe I am on any**  
5 **journal -- I'm not presently on any journals'**  
6 **peer-review committee if that's what you're**  
7 **asking. I have --**  
8 Q Have you ever been on a journal peer-review  
9 committee?  
10 **A Not since my residency.**  
11 Q In your residency what peer-review journal were  
12 you on?  
13 **A I don't recall that. University of Pittsburgh**  
14 **was just heavily involved in research, and so**  
15 **there was lots of peer review that occurred in**  
16 **my residency.**  
17 Q Have you written any articles with respect to  
18 any issue related to mental health?  
19 **A I don't believe so.**  
20 Q Do you have any -- do you hold any degrees  
21 related to mental health?  
22 **A Yes.**  
23 Q What?  
24 **A Well, I have a medical degree.**  
25 Q Okay.

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1 BY MR. GAHNZ:  
2 Q Go ahead.  
3 **A We have different ones.**  
4 **So the first one would be instructor**  
5 **for modules on "Health Care Issues,"**  
6 **"Responding to Medical Emergencies," and**  
7 **"Responding to Special Needs Inmates" for the**  
8 **Mississippi State Standards & Trainings -**  
9 **Corrections Officer Training Course.**  
10 **The second one -- there are a number**  
11 **of them that are very similar presentations**  
12 **that all involve the safe prescribing of**  
13 **sedative hypnotics or benzodiazepines**  
14 **essentially for the Mississippi State Medical**  
15 **Association. And I can point them all out to**  
16 **you, but there's probably 15 of them on here.**  
17 Q Are they called "Benzodiazepines an Update"?  
18 **A That's one of them. Sedative Hypnotics would**  
19 **be another word. So anytime you see**  
20 **benzodiazepine or sedative hypnotic, that would**  
21 **be relevant to the issues in this case.**  
22 Q All right. Anything else?  
23 **A I'll need to review. Just a moment.**  
24 **"Mental Health in the Primary Care**  
25 **Setting," a keynote address at an outcomes**



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1 conference.

2 The ones called "Controlled

3 Substance Update" would also involve the issues

4 in this case.

5 Q All right.

6 A One called "Benzodiazepines, The Good News and

7 Bad News."

8 Q All right.

9 A "Managing Controlled Substances in

10 Mississippi."

11 Q Are these presentations available publicly?

12 A I don't know. They may be.

13 Q Are the -- are these presentations that you

14 give on an annual basis and then update based

15 on if there's been a change in the previous

16 year?

17 A That is what some of these are. So there's a

18 variety of types of presentations. I can't say

19 there's just one type of presentation within

20 there. In other words, some are to hospital

21 faculty, some are to doctors within the State

22 of Mississippi.

23 Q Okay. All right. I think I saw somewhere that

24 you indicated that your testimony splits about

25 60 percent defense and 40 percent plaintiff.

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1 A Okay.

2 Q The first case is State of Mississippi versus

3 Dobbs.

4 A Yes. Those first several cases, I don't know

5 whether you -- those are criminal cases, and I

6 was testifying for drug court -- just as a

7 consultant to drug court. So it's really for

8 neither side but just as an expert on drug

9 testing.

10 Q All right.

11 A So I don't know that you call that --

12 In the State of Mississippi versus

13 Joshua Blunt, that was a criminal case. That

14 was for the defendant.

15 Mississippi Board of Medical

16 Licensure, that was on behalf of the

17 Mississippi Board of Medical Licensure.

18 Mississippi Board of Nursing, two

19 cases. Those were on behalf of the Mississippi

20 Board of Nursing regarding nursing practice by

21 those two nurses.

22 The next one, Lee -- do you want me

23 to just say the name and then defense or

24 plaintiff or do you want me to go on?

25 Q Yes. That would be good.

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1 Is that --

2 A I may have said that in the past, and that may

3 have been -- probably was accurate if I said it

4 somewhere in the past. I would say in the last

5 six months it's probably closer to 70 percent

6 defense and 30 percent plaintiff or something

7 like that. But I certainly do work for both

8 plaintiff and defense attorneys.

9 Q Okay. You provided a case listing for the last

10 four years that was up to date as of

11 November 8, 2019, right?

12 A That is correct.

13 Q Have you -- can you go through this list and

14 tell me which cases you've testified on behalf

15 of the plaintiff?

16 A I can.

17 Q All right.

18 A I will say I can to the best of my knowledge.

19 I believe I --

20 Q All right. Go ahead.

21 A I'll tell you if I don't recall.

22 So you're looking at a list which

23 says 11/8/2019 and is three pages long; is that

24 correct?

25 Q Um-hmm.

Page 53

1 A Lee, defense. Paylan, defense. Bost, defense.

2 Singleton, defense. On the second page the

3 first two, Filichia and Ajibade, both defense.

4 Then Benoit, Clark, Hays, all plaintiff, all

5 three of those.

6 Q Okay.

7 A Sparks v. Tooke is defense. Brooks, plaintiff.

8 Gracia, plaintiff. Parkes v. Jasper County,

9 I'm not recalling that case at this moment. I

10 think it may have been plaintiff, but I -- I

11 just don't recall what that case is about.

12 Leverett, defense. Ivey, defense.

13 Wesley, defense. Harris is not a -- that is

14 not a jail case, but it was defense.

15 Stufflebean, defense. Legros, plaintiff.

16 Clifton, defense. Marziale, defense. Warner,

17 plaintiff. Angerbauer, defense. Pickle,

18 defense.

19 Q All right. So going back to -- through this

20 list again -- thank you for that by the way --

21 which out of any of these cases that are listed

22 deal with benzodiazepines?

23 A If you'll give me just one moment.

24 Q That's fine.

25 A I am not aware that any of them involve

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1     **benzodiazepines as a central issue in the case.**  
2     Q   Okay.  
3     A   **Which is not to say that some -- you know,**  
4       **sometimes the plaintiff -- or, I mean, the**  
5       **inmate may have been taking a benzodiazepine,**  
6       **but that was not the issue. I don't recall**  
7       **which cases those even were, but it was not a**  
8       **central issue in any case that I'm aware of.**  
9     Q   There are several cases here that are listed  
10    where CCS is a defendant; is that correct?  
11    A   **That's correct.**  
12    Q   Have you ever testified on behalf of a  
13    plaintiff against CCS?  
14    A   **The short answer is no, because I would -- I**  
15       **now don't take cases involving -- since I have**  
16       **present cases that -- many of these cases are**  
17       **still ongoing, so I would not take a case with**  
18       **a plaintiff involving a defendant that I --**  
19       **where I'm representing -- where I've been**  
20       **retained on behalf of a defendant in another**  
21       **jurisdiction. Same with if I have been**  
22       **retained by the plaintiff, I wouldn't then take**  
23       **a case on their behalf while the cases are**  
24       **active.**  
25    Q   All right.

Page 56

1     Q   Did your scope of work ever change in this  
2     case?  
3     A   **No. I've been provided like -- I was first**  
4       **asked to -- asked whether I agreed or disagreed**  
5       **with the plaintiffs' expert reports. I've**  
6       **since been asked do I agree or disagree with**  
7       **their supplemental reports, and then do I agree**  
8       **or disagree with the other defense expert**  
9       **reports. So I guess to some extent, yes, they**  
10      **change a little bit.**  
11    Q   Have you ever spoken with any of the attorneys  
12    representing Brown County, Sheriff Gossage, or  
13    Officer Peters?  
14    A   **I have not.**  
15    Q   Have you spoken with any of the attorneys  
16    representing CCS, Nurse Jones, or Nurse  
17    Blozinski?  
18    A   **I have not.**  
19    Q   Have you spoken with any of the parties in this  
20    case?  
21    A   **I have not.**  
22    Q   Okay. Have you had any interaction with  
23    Dr. Fatoki, be it e-mail, letters?  
24    A   **I have not.**  
25    Q   Okay. Prior to this case, did you know who

Page 55

1     **A   If I might just clarify or add to my answer,**  
2       **I've not -- I've not been retained on behalf of**  
3       **CCS in this case either.**  
4     Q   Okay. So let's deal with that.  
5       Who contacted you -- well, in fact,  
6       how did you first learn about this case?  
7     A   **I received correspondence from Ms. Schneider.**  
8       **I don't recall if it was a phone call or an**  
9       **e-mail.**  
10    Q   Okay. And did Attorney Schneider ask you to  
11    provide opinions with respect to anyone other  
12    than Dr. Fatoki?  
13    A   **Let me refer to the scope of work I was given.**  
14    Q   And just for our purposes, where -- where are  
15    you looking to find the scope of work?  
16    A   **The first page of my Rule 26 report.**  
17    Q   Okay.  
18    A   **No. I was only asked to provide opinions**  
19       **regarding the care of Ms. Freiwald by**  
20       **Dr. Fatoki.**  
21    Q   Okay.  
22    A   **Now, of course, she was within a jail cell. By**  
23       **necessity I have to look at the health care**  
24       **that was delivered by the nurses who were**  
25       **working in that jail as well.**

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1     Dr. Fatoki was?  
2     A   **In general I would say no. We do have an**  
3       **annual meeting of correctional health care**  
4       **physicians, and I may or may not have ever --**  
5     Q   Bumped into --  
6     A   **-- bumped into him, but I'm not aware of it.**  
7     Q   All right. Have you ever had your testimony  
8     stricken or limited by a Court in any fashion?  
9     A   **Certainly not as it relates to correctional**  
10    **health care.**  
11    Q   Okay. That tends to me to be a yes.  
12    A   **Okay. The third case on my case list -- let me**  
13       **turn to it.**  
14    Q   State of Mississippi versus Cileste?  
15    A   **No, I'm sorry. It is the fourth, the next one.**  
16    Q   That's okay.  
17    A   **State of Mississippi versus Joshua Blunt. That**  
18       **was a -- that is a criminal case involving**  
19       **Mr. Blunt who left his infant in a car and the**  
20       **child died of a hot -- in a hot car. He was an**  
21       **indigent defendant. And I treated him for his**  
22       **mental health condition after this happened,**  
23       **and I was prepared to provide pro bono**  
24       **testimony regarding his state of mind in that**  
25       **he didn't intend to leave the baby in the car.**

Page 58

1 Q Okay.

2 A **And the Court ruled that what he told me after**

3 **the fact and because I was not an expert in**

4 **Forgotten Baby Syndrome or hot car deaths, that**

5 **I was not allowed to testify at his criminal**

6 **trial.**

7 Q Okay. And was that as a result of what's

8 called a Daubert motion?

9 A **No. It -- I mean, no, it was not. It was just**

10 **a pretrial hearing about what all was going to**

11 **be allowed at his -- at his trial. There was**

12 **ultimately no trial. He took a plea.**

13 Q Okay. With respect to being retained in this

14 case, did you work through a service?

15 A **No.**

16 Q Have you worked through a service in the -- an

17 expert service in the past?

18 A **No.**

19 Q How is it that people find you as a -- as an

20 expert?

21 A **Well, as you pointed out, I have a website**

22 **where my CV is available. Most of my referrals**

23 **come from other attorneys -- from attorneys.**

24 **And I am listed in three expert witness**

25 **directories.**

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1 **of Heyl Royster before.**

2 Q On behalf of -- on a CCS matter?

3 A **I don't recall.**

4 Q When was that?

5 A **Perhaps a year ago. I don't recall exactly.**

6 Q Is that listed on your -- on your case log?

7 A **One moment. If I am not mistaken -- and**

8 **this -- so this is -- I'm not going to say this**

9 **with 100 percent certainty. I believe the case**

10 **is going to be E/O Clifton v. Champaign County,**

11 **Illinois. And I believe further that I was**

12 **retained by Heyl Royster on behalf of the**

13 **Champaign County defendants. It's possible CCS**

14 **was a defendant, but I don't believe I was**

15 **retained on their behalf. And, again, I'm**

16 **saying that to the best of my recollection at**

17 **this moment.**

18 Q What attorney at Heyl Royster are you working

19 with on the Clifton matter?

20 A **The name escapes me at this moment.**

21 Q All right. Is that a jail-related --

22 A **It is.**

23 Q And what is the issue in that case?

24 MR. SALEMI: I'm going to make an

25 objection. I'm going to let him answer, but I

Page 59

1 Q And all those are available on the internet,

2 those expert directories?

3 A **To the best of my knowledge.**

4 Q By --

5 A **Or paper. I'm not certain about paper versus**

6 **the internet.**

7 Q And you have a biography that's listed on those

8 expert services?

9 A **Not services. Directories.**

10 **I mean, in other words, there is a**

11 **directory of expert witnesses in which my**

12 **biography is listed. I do not work for any**

13 **services, as I told you before, where they**

14 **retain cases on my behalf.**

15 Q Okay. You pay to have your biography in a

16 directory?

17 A **That is correct.**

18 Q Have you ever worked with any of the attorneys

19 in this case? And do you know the law firms

20 that are involved?

21 A **I believe that I do.**

22 **So I've never worked with any of the**

23 **attorneys involved in this case before.**

24 Q Okay.

25 A **I believe that I have been retained by the firm**

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1 believe he provided a list of his testimonies.

2 I don't believe -- as required by federal

3 rules. I don't know if the case he's

4 testifying about he's provided testimony in or

5 he's been disclosed in, so it's possible that

6 he's consulting in that case based on the

7 limited testimony he's provided about it so

8 far. If it is -- depending on where the case

9 is venued and its status, he may have a

10 consultant privilege regarding his

11 consultations with counsel in that case that's

12 retained him. He may not even be disclosed in

13 that case.

14 So with those conditions, I'm

15 willing to agree to allow him to provide some

16 limited answers at this point, but those are my

17 concerns right now.

18 BY MR. GAHNZ:

19 Q You may answer the question.

20 A **Could you ask the question again, please?**

21 **I mean, ma'am, could you read it**

22 **back? I'm sorry.**

23 Q It's easier for me just to ask it again.

24 A **Okay.**

25 Q What is the issue in that case, Clifton versus

Page 62

1 Champaign County?

2 **A It was a jail death case. I don't recall**

3 **specifically the cause of death. And I have**

4 **provided some type of sworn testimony, so I**

5 **have been disclosed in all of these cases that**

6 **are on this list.**

7 Q And that was going -- you foresaw my next

8 question. We're going to get done in a hurry.

9 So you gave a deposition in that

10 case?

11 **A I believe that's correct.**

12 Q Okay. And then --

13 **A I can't -- I don't have -- I put down only --**

14 **only cases in which I provided sworn testimony,**

15 **so...**

16 Q Okay. All right. Why don't we take a break.

17 THE VIDEOGRAPHER: We are off the

18 record at 10:49 a.m. This is the end of disc

19 number one in the deposition of Dr. Thomas

20 Fowlkes.

21 (Recess taken, 10:49 a.m. to 10:58 a.m.)

22 (Exhibit Nos. 204 and 205 were marked.)

23 THE VIDEOGRAPHER: We are back on

24 the record at 10:58 a.m. This is the beginning

25 of disc number two in the deposition of

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1 Q And within these two documents are all of your

2 opinions, correct?

3 **A They are a summary of my opinions in this**

4 **matter, yes. They're all the opinions that I**

5 **have at this moment.**

6 Q Well, this is my one and only chance to ask you

7 about your opinions.

8 Are you going to testify about

9 things that are outside of these two reports?

10 MS. SCHNEIDER: Object to the form.

11 **THE WITNESS: Well, that depends on**

12 **what questions you ask me. I mean, this is a**

13 **summary of my opinions and this is all I intend**

14 **to offer, but if I am asked additional**

15 **questions, I may have additional opinions.**

16 BY MR. GAHNZ:

17 Q Such as what?

18 MS. SCHNEIDER: Object to the form.

19 BY MR. GAHNZ:

20 Q What additional opinions do you intend to

21 formulate in this case?

22 MS. SCHNEIDER: Object to the form.

23 Misstates his testimony.

24 **THE WITNESS: I don't intend to**

25 **formulate any other opinions, but I am going to**

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1 Dr. Thomas Fowlkes.

2 BY MR. GAHNZ:

3 Q Okay, Doctor, while we were off the record, I

4 marked in your binder Exhibits 204 and

5 Exhibits 205. Will you take a look? They

6 should be your initial report as well as all

7 the attachments, which is your Rule 26 report,

8 correct?

9 **A Correct.**

10 Q And that is a 41-page document, the actual

11 report?

12 **A That is correct.**

13 Q And it's signed by you on page 41?

14 **A That is correct.**

15 Q And that's been marked as Exhibit 204, correct?

16 **A That is correct.**

17 Q All right. Then the next is Exhibit 205, which

18 is your supplemental report which you authored

19 several weeks ago?

20 **A That's correct.**

21 Q And that's an 11-page document with your

22 signature on the eleventh page, correct?

23 **A That is correct.**

24 Q All right. And that's 205, right?

25 **A That is correct.**

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1 **ask -- answer the questions which I am asked.**

2 BY MR. GAHNZ:

3 Q Do you intend to look at any more documents?

4 **A If I am provided them, yes.**

5 MR. GAHNZ: Counsel, the rules are

6 pretty clear that his opinions need to be

7 contained within his report. If there's

8 additional opinions, are you going to

9 provide -- are you going to offer him again for

10 testimony?

11 MS. SCHNEIDER: He didn't say there

12 was going to be additional opinions. He said

13 the summary of his opinions are contained in

14 the reports and ask him about those opinions.

15 I think what he's saying is he can't anticipate

16 what he's going to be asked at the time of

17 trial. I don't intend to send him any more

18 materials unless -- you know, I probably will

19 provide him with additional depositions as they

20 come in, but I don't intend to ask him to

21 formulate new or additional opinions.

22 BY MR. GAHNZ:

23 Q Have you had enough time since the time that

24 you were retained to review all of the

25 materials in this case?



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1 **A That have been provided to me, yes, I have.**  
 2 Q Have you had ample time to answer the questions  
 3 that were asked of you in the initial scope of  
 4 your retainer?  
 5 **A I have.**  
 6 Q All right. Have you had ample time to provide  
 7 your supplemental report?  
 8 **A I have.**  
 9 Q And these are the opinions that are -- that you  
 10 hold are contained within these two reports,  
 11 correct?  
 12 **A At this time that is correct. But you asked**  
 13 **about would I intend to review additional**  
 14 **documents. And you'll note in my report that I**  
 15 **had asked for additional prior medical records;**  
 16 **I have not received them. If I do receive**  
 17 **them, I will be glad to review them, and they**  
 18 **might or might not change my opinions. If I'm**  
 19 **not provided them, I won't review them.**  
 20 Q Okay. So with respect to your opinions,  
 21 they're not final because you don't have the  
 22 prior medical records that you want?  
 23 MS. SCHNEIDER: Object to the form.  
 24 That misstates his testimony.  
 25 **THE WITNESS: I disagree.**

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1 correct?  
 2 **A I don't believe that's correct.**  
 3 Q When did she receive psychiatric care prior to  
 4 2016?  
 5 **A That wasn't the question. The question you**  
 6 **asked me, as I understood it, was the records I**  
 7 **received indicated that she received no**  
 8 **psychiatric care prior to then.**  
 9 **And the reason I disagreed is I**  
 10 **believe the record didn't say whether she had**  
 11 **received, so no, we don't know whether she**  
 12 **received psychiatric care before 2016 or not.**  
 13 Q Would that make any difference to your opinions  
 14 as to whether or not she received psychiatric  
 15 care prior to 2016?  
 16 **A Well, since I haven't reviewed those records, I**  
 17 **don't know if it would make a difference to my**  
 18 **opinions or not.**  
 19 Q Well, my question was a little different than  
 20 that.  
 21 If she received any sort of  
 22 psychiatric care prior to 2016, would that have  
 23 any impact on your opinions?  
 24 MS. SCHNEIDER: Object to the form.  
 25 **THE WITNESS: Well, I don't know**

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1 BY MR. GAHNZ:  
 2 Q So you don't need the prior medical records to  
 3 formulate your opinions?  
 4 **A I have formulated my opinions based on the**  
 5 **information that has been provided to me up**  
 6 **until this point.**  
 7 Q Have you been provided with any prior medical  
 8 records?  
 9 **A Very limited.**  
 10 Q What prior medical records have you been  
 11 provided?  
 12 **A On page 2 of my report at the top it appears**  
 13 **that Ms. Freiwald received some of her prior**  
 14 **medical care at Bellin Health.**  
 15 Q Okay.  
 16 **A However, this is a summary of the five things**  
 17 **that were in there and the only five things**  
 18 **that were in there; one emergency room**  
 19 **department visit in 2013, one colonoscopy in**  
 20 **2013, another emergency department visit from**  
 21 **2013, one MRI, and one emergency department**  
 22 **visit from 11 of 2015. But the primary care**  
 23 **records don't appear to be there.**  
 24 Q The records that you reviewed indicated that  
 25 there was no psychiatric care prior to 2016,

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1 **what that -- they could or could not. At this**  
 2 **moment I don't believe so. I've formed my**  
 3 **opinions based upon the records that have been**  
 4 **given to me, so my opinions are what they are**  
 5 **based upon what I've been given.**  
 6 BY MR. GAHNZ:  
 7 Q Within these 50-odd pages of report have you  
 8 stated the basis or the bases for all of the  
 9 opinions that you hold in this case?  
 10 **A I believe that I've adequately summarized those**  
 11 **bases, yes.**  
 12 Q All right. And to the extent that there's  
 13 factual inaccuracies in your report, would you  
 14 agree that that could impact your opinions?  
 15 MS. SCHNEIDER: Object to the form.  
 16 **THE WITNESS: I don't know one way**  
 17 **or the other. If you would like to point some**  
 18 **out, I can tell you whether it changes my**  
 19 **opinion or not.**  
 20 BY MR. GAHNZ:  
 21 Q Well, that was -- if you have some things in  
 22 here, in your report, that are factually  
 23 inaccurate, would that impact your opinions?  
 24 MS. SCHNEIDER: Same objection.  
 25 **THE WITNESS: I don't know one way**



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1 or the other without looking -- without being  
 2 told new information.  
 3 BY MR. GAHNZ:  
 4 Q Let's turn to page 17. You wrote that "It is  
 5 unclear why Ms. Freiwald surrendered to BCJ" --  
 6 I'm assuming that's Brown County  
 7 Jail?  
 8 A Yes.  
 9 Q -- "on the evening of 10/27/16 without her  
 10 prescription medications." Correct?  
 11 A Correct.  
 12 Q What information did you review to determine  
 13 the answer to that question?  
 14 A Well, I reviewed the information in the  
 15 supplemental report and the deposition of her  
 16 son which made it somewhat more clear about why  
 17 she did that, but my -- this is -- this  
 18 statement is a little bit different, because I  
 19 don't know why she didn't bring her  
 20 prescription medications. Her son and other  
 21 people, including her therapist, said that she  
 22 was suspecting to only be there one night, so  
 23 one can -- one can make a guess, but one does  
 24 not know for certain why she showed up without  
 25 her prescription medications, because it was

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1 brought her medications, how was she going to  
 2 be able to take them that evening?  
 3 A Well, based on my experience in common practice  
 4 in a jail such as the Brown County Jail, it is  
 5 my expectation that had she brought her  
 6 medications, the security staff would have had  
 7 the nursing staff evaluate those medications  
 8 that night, possibly talk to a provider that  
 9 night to determine which medications would be  
 10 sent with her to Huber, and she would take it  
 11 to Huber. That's the way it would normally  
 12 work.  
 13 Q Okay.  
 14 A But since she didn't have any medications,  
 15 there wasn't any way to do that.  
 16 Q All right. So No. 4 on that same page, you  
 17 indicate that "At Brown County Jail, as  
 18 essentially at every other jail, prescriptions  
 19 from the outside must be reviewed and approved  
 20 by the facility physician before they can be  
 21 dispensed to the patient."  
 22 That's different than the NCCHC  
 23 standard on that, isn't it?  
 24 A I don't believe so.  
 25 Q Do you -- what do you believe the NCCHC

Page 71

1 contained in the preregistration information  
 2 and --  
 3 Q What was contained in the preregistration  
 4 information?  
 5 A The instruction to bring prescription  
 6 medications.  
 7 Q Okay.  
 8 A And it told when and where to report. So she  
 9 reported when and where as contained in those  
 10 instructions but did not bring prescription  
 11 medications.  
 12 But my next sentence was really the  
 13 point of that. Even if she had been -- only  
 14 expected to be incarcerated one night, she  
 15 would have needed her prescription medications  
 16 for that night. So even if it was her  
 17 expectation that she was only going to be there  
 18 one night, she still should have brought her  
 19 medications so she would have them that night.  
 20 Q So -- and that's really the point that I wanted  
 21 to talk about.  
 22 How was she going to be able to take  
 23 her medications that night?  
 24 A She wasn't. She didn't bring them.  
 25 Q Well, I understand that. Assuming she had

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1 standard is?  
 2 A Well, if you would -- so --  
 3 Q I'm going to ask you the question, and then  
 4 I'll go to the book.  
 5 What do you believe the NCCHC  
 6 standard is with respect --  
 7 A I believe it's consistent with this statement.  
 8 Q Okay. And which standard are you referring to?  
 9 A I would need to -- I will need to review my  
 10 copy of the NCCHC standards. If I can look  
 11 them up.  
 12 Q So if the standard J-D-02, essential -- is that  
 13 an essential standard of the NCCHC?  
 14 A I'll take your word for it.  
 15 Q If it provides that -- the following:  
 16 "Therefore, inmates being admitted who report  
 17 currently taking medications or who bring their  
 18 medications with them are to continue the  
 19 medications unless there is a clinical reason  
 20 to alter or discontinue it," would you agree  
 21 with that statement?  
 22 A Well, number one, you're reading -- I would  
 23 need to see the whole policy, but that's not  
 24 inconsistent with this right here.  
 25 Q Fair enough. But now answer my question.

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1 Do you agree with that statement?

2 **A I agree with that statement.**

3 MS. SCHNEIDER: Asked and answered.

4 BY MR. GAHNZ:

5 Q And under -- what is a compliance indicator?

6 **A In general, a compliance indicator to NCCHC**

7 **standards is how to tell if the facility is**

8 **compliant with that standard or not.**

9 Q All right. Under compliance indicator No. 9 on

10 J-D-02 it provides, "Inmates entering the

11 facility on verifiable prescription medication

12 continue to receive the medication in a timely

13 fashion."

14 Was Ms. Freiwald on prescription

15 medications that had been verified?

16 **A No.**

17 Q Okay.

18 **A She didn't bring them, so they couldn't be**

19 **verified.**

20 Q Slightly different question.

21 **A I don't believe so.**

22 Q All right. Well, if we want to argue, we'll

23 get down -- we'll get down and be here till

24 tomorrow.

25 But at the time that Ms. Freiwald

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1 understanding that your last question asked was

2 she on verified medications. And so she -- her

3 medications had not been verified by the jail.

4 I do agree that she had been prescribed

5 medications prior to coming to the jail.

6 BY MR. GAHNZ:

7 Q And the medications that she was on were

8 verified by the jail?

9 **A Not that night. They were provided -- they**

10 **were verified later after her son brought them.**

11 Q Okay. So within that standard it talks about

12 the facility has several options to ensure that

13 the inmates admitted on prescribed medications

14 continue to receive their necessary drugs in a

15 timely manner.

16 Are you aware of that standard

17 within the NCCHC?

18 MS. SCHNEIDER: Object to the form.

19 MR. SALEMI: And I object to the

20 form in that counsel is not reading standards.

21 Counsel is reading additional information that

22 are attached to standards but not referencing

23 standards. So I object to form. It misstates

24 the NCCHC standards.

25 **THE WITNESS: I would like to be**

Page 75

1 entered the jail, was she on prescribed

2 medications?

3 **A It was my understanding from your --**

4 Q The question is, was she on --

5 MR. SALEMI: Hold on. Hold on.

6 MS. SCHNEIDER: Yeah.

7 MR. SALEMI: Yeah. Objection.

8 You've got to allow him to --

9 BY MR. GAHNZ:

10 Q Go ahead and answer. Go ahead and answer. I'm

11 sorry.

12 MR. SALEMI: You've got to allow him

13 to answer.

14 BY MR. GAHNZ:

15 Q I didn't mean to step on you.

16 **A That's okay.**

17 MR. SALEMI: Hold on. Number two,

18 the video will show there's a pattern of

19 argumentative questions that's developing here,

20 so I object that it's argumentative, and I

21 object to form. I think the last question was

22 compound, but you can answer if you can.

23 **THE WITNESS: Okay. It was --**

24 MS. SCHNEIDER: Join.

25 **THE WITNESS: It was my**

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1 able -- I would like to be able to review the

2 standard you're referring to.

3 BY MR. GAHNZ:

4 Q Sure. I wanted you to look at -- there's the

5 highlighted section at page 72, the last

6 paragraph under the discussion.

7 MR. SALEMI: Can I see it first,

8 please?

9 BY MR. GAHNZ:

10 Q So why don't you do this, Doctor. Would you

11 read the last paragraph on page 72 into the

12 record?

13 MR. SALEMI: And I'll renew my

14 objection that this is not an NCCHC standard.

15 It is in a section entitled Discussions, which

16 is a reference within the standards to an NCCHC

17 standard. So I object to form.

18 MS. SCHNEIDER: Join.

19 **THE WITNESS: So this is standard**

20 **J-D-02. And the standard itself is listed on**

21 **the first page, the compliance indicators 1**

22 **through 11, several of which apply here.**

23 **And then what is the specific**

24 **paragraph you asked me to read?**

25

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1 BY MR. GAHNZ:  
 2 Q The last paragraph at the bottom of page 72.  
 3 A Okay. "The facility has several options to  
 4 ensure that inmates admitted on prescribed  
 5 medication continue to receive the necessary  
 6 drugs in a timely manner. One protocol  
 7 requires the provider to be contacted for a  
 8 verbal order after health care staff have  
 9 verified the prescription by contacting the  
 10 community prescriber or pharmacy. Another  
 11 authorizes the nurses to give the medications  
 12 based on the community prescriber's valid order  
 13 until the facility provider can see the inmate.  
 14 Some protocols allow the use of medication  
 15 brought into the facility if it is in original  
 16 pharmacy packaging and labeled as required and  
 17 staff verified the order with the community  
 18 prescriber or pharmacist."  
 19 Q Okay. Thank you.  
 20 So that discussion with respect to  
 21 the standard is different than what you stated  
 22 in No. 4, correct, is at essentially every  
 23 other jail prescriptions must be reviewed by  
 24 the -- by the jail doctor?  
 25 MS. SCHNEIDER: Object to the form.

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1 that they weren't taking them. That is an  
 2 example of why it's prudent practice to discuss  
 3 with the provider.  
 4 Another example is that oftentimes  
 5 patients have received medications from outside  
 6 providers that are inappropriate or are not  
 7 necessary in a jail setting. An example in  
 8 this case would be the Ambien that Ms. Freiwald  
 9 had been prescribed. She neither brought it  
 10 nor would it have been -- should it have been  
 11 continued had she brought it.  
 12 BY MR. GAHNZ:  
 13 Q All right. So have you completed your answer?  
 14 A I have.  
 15 Q All right. Motion to strike as nonresponsive.  
 16 My question, sir, was, were there  
 17 any medications that Ms. Freiwald was  
 18 prescribed that were medically inappropriate?  
 19 MS. SCHNEIDER: Asked and answered  
 20 and object to the form.  
 21 THE WITNESS: So she was on  
 22 medications, and they discussed those  
 23 medications with Dr. Fatoki. He continued some  
 24 of those medications he did not continue others  
 25 with those medications.

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1 THE WITNESS: I do not believe it's  
 2 inconsistent. And that is my opinion and it's  
 3 not changed.  
 4 BY MR. GAHNZ:  
 5 Q Okay. In Ms. Freiwald's case which of her  
 6 medications were not medically appropriate?  
 7 MS. SCHNEIDER: Object to the form.  
 8 THE WITNESS: So in this -- in this  
 9 No. 4 I'm not referencing Ms. Freiwald in  
 10 particular in this. What I said was, there are  
 11 a number of reasons that it is prudent  
 12 prescribing practice that the provider -- that  
 13 the provider decide which medicines are to be  
 14 continued and which are not, and I provided  
 15 examples that may or may not apply in her case.  
 16 A very common example that I will  
 17 give that does not apply in this case but is a  
 18 very common reason is oftentimes patients are  
 19 not compliant with their medications and they  
 20 have been prescribed five different kind of  
 21 blood pressure medicines. So it's not -- as an  
 22 example, it's not safe to continue all five  
 23 blood pressure medicines because they haven't  
 24 been compliant. You would potentially harm the  
 25 patient with all those blood pressure medicines

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1 BY MR. GAHNZ:  
 2 Q Have you completed your answer?  
 3 A I have.  
 4 Q Motion to strike as nonresponsive. I'll ask  
 5 again.  
 6 Were any of the medications that  
 7 Ms. Freiwald was prescribed as she entered the  
 8 jail not medically appropriate?  
 9 A Can you show me --  
 10 MS. SCHNEIDER: Asked and answered  
 11 and --  
 12 THE WITNESS: Can you show me where  
 13 that's my opinion? I mean, I don't necessarily  
 14 have that opinion that they were inappropriate.  
 15 I believe that it was appropriate to not  
 16 continue some of them. So there's a -- that's  
 17 a different -- that's different.  
 18 BY MR. GAHNZ:  
 19 Q Sir, I'm just reading form your report.  
 20 A Yes. And I've told you that this is not --  
 21 these were examples of reasons that that's  
 22 prudent prescribing practice, not specific to  
 23 Ms. Freiwald.  
 24 Q So I guess my -- my confusion is you added all  
 25 of this verbiage into your report. And is it

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1 your testimony that 4(A) does not apply to  
 2 Ms. Freiwald?  
 3 **A That is not my testimony whatsoever.**  
 4 **Q** Okay. So then can you tell me which, if any,  
 5 of the prescriptions that she was prescribed as  
 6 she entered the jail were medically  
 7 inappropriate?  
 8 **MS. SCHNEIDER:** Object to the form.  
 9 **THE WITNESS:** First -- first of all,  
 10 **this does not say that her medicines were**  
 11 **inappropriate. That is not my opinion.**  
 12 **My opinion is that Dr. Fatoki's**  
 13 **prescribing practice was appropriate, and I**  
 14 **gave reasons why that was appropriate. Some of**  
 15 **her medications were appropriately not**  
 16 **continued. I am not phrasing them as**  
 17 **inappropriate medications; they were prescribed**  
 18 **by outside providers, and Dr. Fatoki did not**  
 19 **feel like they should be continued and I agree**  
 20 **with that. You can call them inappropriate if**  
 21 **you would like. I don't call them that.**  
 22 **BY MR. GAHNZ:**  
 23 **Q** Which of the medications that Ms. Freiwald was  
 24 prescribed as she entered the jail were  
 25 therapeutically duplicative?

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1 document you're referring to.  
 2 **A Okay. I'm referring to a Bates stamp**  
 3 **HRVACCS12.**  
 4 **Q** Okay. Go ahead.  
 5 **A So -- just one moment, please.**  
 6 **So as an example, the -- this sheet**  
 7 **has a list of when these prescriptions were**  
 8 **last filled.**  
 9 **Q** Okay.  
 10 **A Some of them are 30-day prescriptions, some of**  
 11 **them are 90-day prescriptions.**  
 12 **Q** Okay.  
 13 **A The clonazepam was last filled on 9/23.**  
 14 **Q** Okay.  
 15 **A So that's more than a month prior. But she had**  
 16 **pills remaining, so that means that she's not**  
 17 **talking that as prescribed on that.**  
 18 **Q** So the clonazepam was prescribed as a 30-day  
 19 renewal?  
 20 **A That's right.**  
 21 **Q** And it --  
 22 **A Well, it was a 30 -- yeah, that's right.**  
 23 **And -- like the gabapentin prescribed on 7/27**  
 24 **and was a -- was I believe -- I believe that**  
 25 **would be a 90-day. So that's -- and there were**

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1 **MS. SCHNEIDER:** Object to the form.  
 2 **THE WITNESS: I am not aware of any.**  
 3 **Again, I told you that this is the reasons that**  
 4 **it is -- that -- that nurses should not just**  
 5 **continue medications but should talk to a**  
 6 **provider. The person may have two different**  
 7 **type of medications of one kind or another, and**  
 8 **those are duplicates and so only one should be**  
 9 **continued.**  
 10 **That is -- that is an example of**  
 11 **what I'm telling you that it's prescribing**  
 12 **practice or safe.**  
 13 **BY MR. GAHNZ:**  
 14 **Q** Were there any medications that Ms. Freiwald  
 15 was taking -- well, let me read it. You wrote  
 16 "They may not be taking the medications as  
 17 prescribed."  
 18 Is there any indication that  
 19 Ms. Freiwald was taking any of her medications  
 20 other than as prescribed?  
 21 **A Yes.**  
 22 **Q** Which medications?  
 23 **A Just a minute. So --**  
 24 **Q** I don't mean to -- I don't want to step on your  
 25 answer, so I'm going to ask you to tell us what

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1 **73 remaining. So, in other words, that's more**  
 2 **than 90 days and 73 remaining, so not taking**  
 3 **that as prescribed.**  
 4 **Q** Okay. The clonazepam, is it your understanding  
 5 that she was to -- what was your understanding  
 6 as to what she was to be taking, Ms. Freiwald?  
 7 **A The instructions on the bottle were one tablet**  
 8 **by mouth at night and half tablet as needed for**  
 9 **anxiety.**  
 10 **Q** Okay. So as needed means that sometimes if you  
 11 don't feel like you have to take it, you  
 12 wouldn't necessarily take it?  
 13 **A That's correct.**  
 14 **Q** Okay. All right. Going back to your report,  
 15 you indicated that another reason why it's a  
 16 prudent policy to have the medications reviewed  
 17 is that some are not medically necessary. At  
 18 4(B) at page 18, right?  
 19 **A And may not be safe within a jail environment.**  
 20 **Q** We'll get to that. But were there any  
 21 medications that Ms. Freiwald was prescribed  
 22 when she got to the jail that were not  
 23 medically necessary?  
 24 **A There were some that were -- were**  
 25 **inappropriately prescribed, yes.**



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1 Q Which?

2 A **Gabapentin.**

3 Q Okay.

4 A **Clonazepam.**

5 Q Okay.

6 A **And then Ambien, although not -- it does not**

7 **fall in that category. In other words, it's**

8 **not necessarily inappropriately prescribed, but**

9 **it would not be safe in a jail setting.**

10 Q So who prescribed her the clonazepam and the

11 gabapentin?

12 A **Well, the gabapentin I'm not certain about.**

13 Q Okay.

14 A **I don't believe -- the best that I can tell,**

15 **Nurse Practitioner Page did not prescribe that**

16 **medication but only listed it as a medication**

17 **she was on. That's part of the medical records**

18 **I don't have. I believe she probably received**

19 **it from Bellin Health.**

20 Q Do you know who Dr. Sheets is?

21 A **Yes.**

22 Q Did Dr. Sheets prescribe the clonazepam?

23 A **He did.**

24 Q And he's a psychiatrist?

25 A **To the best of my knowledge, he is.**

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1 **understanding from some records that**

2 **Ms. Freiwald was originally prescribed**

3 **gabapentin for back pain, which is a non-FDA**

4 **indication, so an off-label indication. That**

5 **does not mean it's a breach of the standard of**

6 **care, but it does mean that it's not an FDA**

7 **indication. I'm not aware that Dr. Sheets was**

8 **a pain management doctor, but to the extent**

9 **that he provided it for back pain, yes, it**

10 **would probably be inappropriate for a**

11 **psychiatrist to prescribe gabapentin for**

12 **chronic pain.**

13 BY MR. GAHNZ:

14 Q All right. Continuing on page 18 under No. 5.

15 You talk about the -- the sentencing order,

16 correct?

17 A **That's correct.**

18 Q And one of the things that you wrote was, "A

19 reasonable provider would interpret that to

20 mean all prescriptions which were currently

21 being prescribed by the prescriber responsible

22 for her care." Correct?

23 A **That is correct.**

24 Q And by that, you mean the judge's order to take

25 all prescribed medications?

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1 Q And did he also prescribe the gabapentin?

2 A **I don't believe so. In other words, it's**

3 **listed on -- as a medication that she's taking,**

4 **but I don't know whether -- he may have**

5 **refilled it. I don't believe he was the person**

6 **that started it, but I don't even -- I'm not**

7 **certain that he even refilled it.**

8 Q Did Dr. Sheets violate the standard of care by

9 prescribing clonazepam?

10 MS. SCHNEIDER: Object to the form.

11 **THE WITNESS: I believe it was**

12 **not -- not prudent of him to have restarted**

13 **that clonazepam, yes. I mean, I don't know**

14 **whether it's a breach of the standard of care.**

15 **It's not a very safe prescribing practice.**

16 BY MR. GAHNZ:

17 Q All right. Assume that Dr. Sheets also

18 prescribed the gabapentin.

19 A **Okay.**

20 Q Would he have violated the standard of care by

21 prescribing Ms. Freiwald gabapentin?

22 MS. SCHNEIDER: Object to the form.

23 **THE WITNESS: I don't see any**

24 **rationale in his note for the -- for the reason**

25 **of that. In other words, it was my**

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1 A **Yes.**

2 Q Okay. Is it your understanding that Huber

3 inmates are responsible for their own medical

4 care?

5 A **That is correct. In general. Not emergency**

6 **care, but in general, yes.**

7 Q Okay. So in that circumstance, the prescriber

8 responsible for her care would have been either

9 the Nurse Practitioner Page or Dr. Sheets,

10 fair?

11 MR. SALEMI: I'm sorry, what

12 circumstance?

13 MR. GAHNZ: Under the circumstance

14 that she's responsible for her own medical

15 care.

16 MS. SCHNEIDER: Object to the form.

17 MS. DOYLE: I'll join.

18 **THE WITNESS: No, I believe in this**

19 **case Dr. Fatoki was the medical director at the**

20 **jail and would have the ultimate authority over**

21 **what medications would be taken by inmates even**

22 **if they were prescribed by outside prescribers.**

23 **So, in other words, yes, she would**

24 **go back potentially to Nurse Practitioner Page,**

25 **not Dr. Sheets. Dr. Sheets hadn't seen her**



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1 since March and no longer worked there. But  
 2 Nurse Practitioner Page could prescribe  
 3 whatever medications that she wanted to, but it  
 4 would be up to Dr. Fatoki whether it was  
 5 medically appropriate to continue those while  
 6 she was a Huber inmate.  
 7 BY MR. GAHNZ:  
 8 Q And that's really what I'm driving at. The  
 9 fact that Fatoki approved or disapproved the  
 10 medication didn't change whether it had been  
 11 prescribed?  
 12 A That is correct.  
 13 Q Okay. So in order to comply with the Court's  
 14 order, Ms. Freiwald was required to take the  
 15 clonazepam and the gabapentin?  
 16 MS. SCHNEIDER: Object to the form.  
 17 MS. DOYLE: I'll join.  
 18 THE WITNESS: I disagree.  
 19 BY MR. GAHNZ:  
 20 Q And why is that?  
 21 A Well, I can tell you from my own practice I  
 22 routinely receive patients with these court  
 23 orders to comply with their -- with their  
 24 prescribed medications. I don't allow them to  
 25 take all the medications that they've

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1 that is -- in my experience is what the Court's  
 2 intentions are.  
 3 Q There's nothing in the sentencing transcript  
 4 that talks about which -- well, strike that  
 5 question.  
 6 The order, though, reads that  
 7 Ms. Freiwald was to take all prescribed  
 8 medications as a condition of her sentence?  
 9 A You can -- if you want to show me the exact  
 10 wording --  
 11 Q Why don't you turn to Exhibit 10.  
 12 A I don't have Exhibit 10 I don't think. I can  
 13 get it.  
 14 Q Well --  
 15 A What I'm saying is you read -- I accepted your  
 16 reading of what the exact language is. My  
 17 interpretation of that language and I believe  
 18 any reasonable physician's interpretation is  
 19 that the judge is not telling the provider  
 20 exactly which medication to provide, but  
 21 instead is saying that the patient is to follow  
 22 their doctor's instructions.  
 23 Q So Exhibit 10, page 2, Judgment of Conviction.  
 24 Do you see where it says take all prescribed  
 25 medications?

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1 necessarily been prescribed. I allow them to  
 2 take which ones are medically appropriate.  
 3 When they get out and when they go  
 4 back to their prescriber and they talk to the  
 5 Court about whether they do or don't take those  
 6 medications, in other words, this happens all  
 7 the time in my practice and in every other  
 8 practice.  
 9 Q What happens all the time?  
 10 A Inmates come to jail with prescriptions that  
 11 are not continued in jail for a variety of  
 12 reasons. And those I listed in No. 4.  
 13 Q Right.  
 14 A So it would be dangerous to just blindly  
 15 continue all medications. In other words, if a  
 16 person comes with five blood pressure medicines  
 17 and you take it literally that you should give  
 18 them all five of their blood pressure  
 19 medications and they haven't been taking them  
 20 and now they're in jail and you give them five  
 21 pills, they might be dead of low blood  
 22 pressure.  
 23 So it's only prudent for you to  
 24 review them and continue the ones that are  
 25 appropriate. And that's what the Court's --

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1 A I do.  
 2 Q All right. And that's what the judge ordered?  
 3 A And I told you my interpretation of that is --  
 4 is not a literal interpretation.  
 5 Q Okay.  
 6 A This order was also the one that was signed  
 7 after Ms. Freiwald's death.  
 8 Q All right. Have you completed your answer?  
 9 A I have.  
 10 Q Move to strike as nonresponsive.  
 11 Does the judgment of conviction read  
 12 "Take all prescribed medications"?  
 13 MS. SCHNEIDER: Are you asking him  
 14 what the document says? He can say what the  
 15 document says, but he's already told you his  
 16 interpretation of it. Go ahead and answer.  
 17 THE WITNESS: I agree that is the  
 18 words that are on that paper.  
 19 BY MR. GAHNZ:  
 20 Q Thank you.  
 21 And that in this particular case did  
 22 not happen?  
 23 MS. SCHNEIDER: Object.  
 24 BY MR. GAHNZ:  
 25 Q Ms. Freiwald was -- did not take all prescribed

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1 medications while she was in jail?

2 **A I --**

3 MS. SCHNEIDER: Object to the form.

4 MS. DOYLE: I'll join.

5 **THE WITNESS: I'm sorry. I didn't**

6 **mean to jump on top.**

7 **My interpretation of this court**

8 **order is that Dr. Fatoki followed this court**

9 **order even though he wasn't aware of it. I**

10 **didn't see any evidence in the record that he**

11 **was aware of it. And these are common court**

12 **orders, and physicians who work in jails are**

13 **familiar with these type of court orders. And**

14 **my interpretation is that he followed the**

15 **spirit of this court order. Well, he -- it**

16 **wasn't ordered to him. So, in other words, it**

17 **wasn't ordered to him. It was ordered to**

18 **Ms. Freiwald.**

19 BY MR. GAHNZ:

20 **Q Right. And that's my point.**

21 And Ms. Freiwald did not take all of

22 the prescribed medications while she was at

23 Brown County Medical -- at Brown County Jail?

24 MS. SCHNEIDER: Object to the form.

25 MS. DOYLE: I'll join.

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1 **first few days because she didn't bring them in**

2 **with her, but she did take them starting on the**

3 **31st.**

4 BY MR. GAHNZ:

5 **Q Did she take gabapentin at all while she was at**

6 **the Brown County jail?**

7 **A I don't know that for certain. I know that she**

8 **was not provided it by the Brown County Jail.**

9 **Q Did she take clonazepam while she was at the**

10 **Brown County Jail?**

11 **A I know that she wasn't provided it by them. I**

12 **don't know whether she might have taken it when**

13 **she was out or not.**

14 **Q And if she did take it while she was out, she**

15 **would be in violation of jail policy, correct?**

16 **A I don't remember the exact policy, but yes,**

17 **most jails and I think the Huber center had a**

18 **policy that you weren't to take medications**

19 **which weren't prescribed, yes. I would be**

20 **surprised if they didn't, but I don't recall it**

21 **exactly.**

22 **Q So I want to talk about Dr. Fatoki and his**

23 **decision to discontinue gabapentin and**

24 **clonazepam, okay? Are you with me?**

25 **A I am. I would characterize it as his not**

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1 MR. GAHNZ: Let me -- what's the

2 problem with the form of that question,

3 Counsel?

4 MS. SCHNEIDER: Because he's already

5 given you his interpretation of it. Your --

6 MR. GAHNZ: I understand. He

7 answered a different question. I'm sorry, I

8 didn't mean to argue with you. But I asked a

9 question, I'll listen to the answer.

10 MR. SALEMI: Could you read it

11 again, please?

12 (Last question read.)

13 MS. SCHNEIDER: Same objections. Go

14 ahead.

15 **THE WITNESS: So my interpretation**

16 **of that order to Ms. Freiwald was that she**

17 **comply with her physicians by taking all the**

18 **medications that had been prescribed to her --**

19 **were being prescribed to her at that time.**

20 **While the time she was at the Huber center, her**

21 **responsible physician, the physician**

22 **responsible for her care, was Dr. Fatoki, and**

23 **she was given the medications that she had been**

24 **prescribed and that had been approved by**

25 **Dr. Fatoki to take. She didn't take them the**

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1 **continuing prescriptions from the outside**

2 **rather than discontinuing it, but yes, I**

3 **understand.**

4 **Q What is the difference between not continuing**

5 **and discontinuing?**

6 **A Well, with regard to the gabapentin as an**

7 **example, he didn't say we were not going to --**

8 **we were going to discontinue it and never give**

9 **it to her again. He said we're not going to**

10 **provide it right now until we determine --**

11 **until we get medical records and find out why**

12 **she was provided it. So he didn't say that he**

13 **was never giving it again. He just did not**

14 **continue it on his initial orders. Same with**

15 **the clonazepam.**

16 **Q What records are you relying on for the**

17 **statement that Dr. Fatoki left open the**

18 **possibility of restarting either gabapentin or**

19 **clonazepam?**

20 **A His testimony and the nurses -- the nurses'**

21 **testimony that he asked to get a release of**

22 **information and get her medical records.**

23 **Q Is there any contemporaneous writing from**

24 **either a nurse or a doctor -- or Dr. Fatoki**

25 **specifically that indicates that these were**

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1 temporary as opposed to permanent cessation of  
 2 gabapentin?  
 3 **A Well, number -- so two things. First of all,**  
 4 **Dr. Fatoki was on the phone speaking with the**  
 5 **nurse. So the nurse was documenting what**  
 6 **Dr. Fatoki's orders were. Dr. Fatoki was not**  
 7 **documenting contemporaneously. It was the**  
 8 **nurse that was documenting contemporaneously.**  
 9 **And yes -- so number two, it is a**  
 10 **normal custom and practice that one starts**  
 11 **medications when a person reports to jail and**  
 12 **makes changes as needed after that. So**  
 13 **that's -- that is just the usual custom and**  
 14 **practice of correctional health care.**  
 15 **Q Okay.**  
 16 **A And then further, referring back to that same**  
 17 **page we were on before, so it's CCS12, the**  
 18 **nurse makes the notation "Send ROI." So send**  
 19 **release of information.**  
 20 **Q So from the notation "Send ROI," which is**  
 21 **release of information --**  
 22 **A Correct.**  
 23 **Q -- you are concluding that based on that**  
 24 **written record, that there was a possibility of**  
 25 **restarting these medications?**

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1 case, did Dr. Fatoki provide any written  
 2 explanation as to why he did not approve the  
 3 continuation of gabapentin for Ruth Freiwald?  
 4 **MS. SCHNEIDER: Object to the form.**  
 5 **THE WITNESS: Well, it is my**  
 6 **understanding that Dr. Fatoki was on the**  
 7 **telephone with the nurse and that therefore he**  
 8 **wouldn't be able to document anything until he**  
 9 **next came to the facility. And he was next at**  
 10 **the facility after Ms. Freiwald had died and**  
 11 **did not provide any -- would not be -- it would**  
 12 **be normal not to write on a chart after a**  
 13 **person's death, so I don't think he had an**  
 14 **opportunity to provide that ex- -- explanation.**  
 15 **BY MR. GAHNZ:**  
 16 **Q Have you finished your answer?**  
 17 **A I have.**  
 18 **Q All right. My question, though, is a little**  
 19 **different.**  
 20 **Did you see any record where**  
 21 **Dr. Fatoki documented the reason that he did**  
 22 **not approve the continuation of gabapentin for**  
 23 **Ruth Freiwald?**  
 24 **MS. SCHNEIDER: Asked and answered.**  
 25 **THE WITNESS: I did not see that**

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1 **A Well, that and Dr. Fatoki's testimony that he**  
 2 **asked the nurse -- or that both he and the**  
 3 **nurse said that he asked to get the records to**  
 4 **find out why it was being prescribed.**  
 5 **So once he found out why it was**  
 6 **being prescribed, he might restart it or he**  
 7 **might leave it discontinued.**  
 8 **Q Are you aware of CCS policy that requires a**  
 9 **doctor to give a written explanation if he**  
 10 **discontinues or doesn't approve a medication?**  
 11 **A If you would like to show me the particular**  
 12 **policy, I will be glad to interpret it. I**  
 13 **understand -- I hear what you're saying, and if**  
 14 **you want to show me that policy, I'll interpret**  
 15 **it.**  
 16 **Q Well, I'm not asking you to interpret it. I'm**  
 17 **asking you are you aware of such a policy,**  
 18 **whether it exists or not, sir?**  
 19 **A I have reviewed the CCS policies, and I believe**  
 20 **I recall the language that you're describing as**  
 21 **part of an entire policy. So if you want to**  
 22 **show it to me, I'll be glad to give you my**  
 23 **opinion on it.**  
 24 **Q Let me ask you it this way: In review of any**  
 25 **of the materials that you were provided in this**

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1 **documentation nor any other documentation from**  
 2 **Dr. Fatoki prior to Ms. Freiwald's death.**  
 3 **BY MR. GAHNZ:**  
 4 **Q Okay. With respect to Dr. Fatoki's decision**  
 5 **not to approve the continued use of clonazepam,**  
 6 **did you see any written explanation as to his**  
 7 **reasons for that decision?**  
 8 **A That is the same answer as the last one I just**  
 9 **gave, that I didn't see documentation of that**  
 10 **or anything else by Dr. Fatoki in the chart**  
 11 **prior to Ms. Freiwald's death.**  
 12 **Q So when Dr.--**  
 13 **A By the way, I need -- I need to correct**  
 14 **something. I said before her death, but before**  
 15 **her suicide. He was in the facility before she**  
 16 **died.**  
 17 **Q Okay. What assessment of Ruth Freiwald was**  
 18 **made by Dr. Fatoki?**  
 19 **A A telephone assessment of her condition and**  
 20 **medications.**  
 21 **Q All right. When did he speak with her on the**  
 22 **telephone?**  
 23 **A I don't believe he did. He spoke with the**  
 24 **nurse.**  
 25 **Q Okay. So what is an assessment?**

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1 **A A gathering of information.**  
 2 Q From whom?  
 3 **A From all sources --**  
 4 Q All right.  
 5 **A -- available.**  
 6 Q Was there any indication that Dr. Fatoki ever  
 7 saw Ruth Freiwald before he made the  
 8 determination to not approve her gabapentin?  
 9 **A No. And -- and that would not be customary**  
 10 **practice.**  
 11 Q Was there any indication that he saw her before  
 12 he made the determination not to continue the  
 13 clonazepam?  
 14 **A No. And that would not be standard practice.**  
 15 **It would not be standard practice to see a**  
 16 **person.**  
 17 Q So he didn't see her, he didn't talk to her on  
 18 the phone, correct?  
 19 **A Not to the best of my understanding.**  
 20 Q Did he review any medical records prior to  
 21 making his decision?  
 22 **A I believe he spoke with the nurse. I don't --**  
 23 **I believe he reviewed what medical records that**  
 24 **the nurse had.**  
 25 Q How did he review the medical records that the

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1 **A The receiving -- the medical receiving**  
 2 **screening done by the correctional officer.**  
 3 Q So is it your position that a correctional  
 4 officer can create a medical record?  
 5 MS. SCHNEIDER: Object to the form.  
 6 **THE WITNESS: Well, it's**  
 7 **information. It's a jail chart, and it becomes**  
 8 **part of the medical record. Yes, the receiving**  
 9 **screening is part of the medical record.**  
 10 BY MR. GAHNZ:  
 11 Q All right. Other than the receiving screening  
 12 and the -- and the medication verification  
 13 form, what other information did Dr. Fatoki  
 14 have when he made the decision not to approve  
 15 the gabapentin and clonazepam?  
 16 **A Potentially the information that had been**  
 17 **recorded by Nurse Dennisen on the -- on that**  
 18 **receiving screening from the day before or from**  
 19 **a couple of days before.**  
 20 Q When you say "potentially" --  
 21 **A Well, that -- it was information that was**  
 22 **available to the nurse that was speaking to**  
 23 **Dr. Fatoki.**  
 24 Q Okay.  
 25 **A And the nurse and Dr. Fatoki don't recall the**

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1 nurse had?  
 2 **A He reviewed them over the phone with her. She**  
 3 **had the prescription -- this -- on page 12.**  
 4 **The prescriptions, the date, the pills left,**  
 5 **et cetera.**  
 6 Q And you're saying that's -- the document that  
 7 you're looking at is the medication  
 8 verification form, correct?  
 9 **A Well, there's other medical records as well.**  
 10 Q Well, that's my -- did the nurse go through any  
 11 of these records with Dr. Fatoki?  
 12 **A It's my recollection from their deposition**  
 13 **testimony that neither of them recall the**  
 14 **specifics of what they went over but that it**  
 15 **was their usual custom and practice to do so**  
 16 **and to provide whatever necessary information**  
 17 **was to make the decision.**  
 18 **So it's my understanding from their**  
 19 **deposition testimony they didn't recall the**  
 20 **specifics.**  
 21 Q Did they have any medical records for Ruth  
 22 Freiwald?  
 23 **A Yes.**  
 24 Q What medical records did they have of Ruth  
 25 Freiwald's?

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1 **specifics of the information exchanged, but it**  
 2 **would be their custom and practice to provide**  
 3 **any necessary information. And since that was**  
 4 **available, it's quite likely that they did**  
 5 **discuss that information.**  
 6 Q Well, did Nurse Jones document any of the  
 7 reasons that Dr. Fatoki gave as to why he  
 8 wasn't going to approve clonazepam or  
 9 gabapentin?  
 10 **A What she documented on this form is that the**  
 11 **gabapentin was not approved by the physician**  
 12 **and to send a release of information. What was**  
 13 **documented on the clonazepam was that it was**  
 14 **not approved by the physician, and the officers**  
 15 **were notified to contact HSU with any**  
 16 **withdrawal symptoms.**  
 17 Q So other than that information that you just  
 18 read to us, was there any other information as  
 19 to the thought process that Dr. Fatoki engaged  
 20 in when he determined not to continue the  
 21 gabapentin or the clonazepam?  
 22 **A His deposition testimony.**  
 23 Q All right. And that was taken three years  
 24 after, right?  
 25 **A Something on that order, yes.**



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1 Q Okay. When Dr. Fatoki made the determination  
2 to discontinue -- or to not continue the  
3 gabapentin, did he know why Ruth Freiwald was  
4 taking it?

5 **A I think the answer to that is certainly not,**  
6 **and he was asking for a release of information**  
7 **so he could find out.**

8 Q Did he know how long she had been taking it?

9 **A I don't see evidence of that.**

10 Q All right. Did he know who had prescribed it?

11 **A I don't believe that was recorded by -- on this**  
12 **form, so I don't believe it was provided to**  
13 **him.**

14 Q With respect to clonazepam, did Dr. Fatoki know  
15 how long she had been on it?

16 **A I don't see evidence on this record that he**  
17 **did.**

18 Q Did he know why she was on it?

19 **A I don't see a diagnosis recorded on here.**

20 Q Did Dr. Fatoki know prior to making his  
21 determination to not continue the clonazepam  
22 and the gabapentin that Ruth Freiwald had  
23 attempted suicide in February of 2016?

24 **A I believe it was his deposition testimony that**  
25 **he did not know that.**

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1 all?

2 **A You did.**

3 Q Okay. What symptoms was Ms. Freiwald  
4 describing over the weekend?

5 **A I thought I had perhaps put the sick call**  
6 **requests in there, but I did not.**

7 **The symptoms that she was**  
8 **describing -- there are two sick call requests.**  
9 **They are HRVACCS18 and 17 in that order.**

10 Q Okay.

11 **A Would you like me to read her complaints?**

12 Q Rather than do that, is that the complaints  
13 that you're referencing in paragraph 12 at  
14 page 20?

15 **A I believe so, but just let me -- yes.**

16 Q What's the CIWA scale?

17 **A That is -- CIWA stands for Clinical Institute**  
18 **Withdrawal Assessment Scale. And it is a**  
19 **rating scale to rate the severity of primarily**  
20 **alcohol withdrawal symptoms.**

21 Q Is it also used for benzodiazepine withdrawals  
22 rating?

23 **A It's not designed for that use, and I don't use**  
24 **it for that purpose.**

25 Q Okay.

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1 Q Did he know -- did Dr. Fatoki know that Ruth  
2 Freiwald suffered from severe depression and  
3 anxiety when he made a decision not to continue  
4 the clonazepam and the gabapentin?

5 **A I believe it was his deposition testimony that**  
6 **he knew that she had depression because she was**  
7 **on fluoxetine which is an antidepressant. I**  
8 **believe that -- clonazepam is quite often**  
9 **prescribed for anxiety, so it would be -- not**  
10 **be unreasonable that he made that conclusion,**  
11 **but I don't recall what he said in his**  
12 **deposition testimony about that.**

13 Q Okay. So at paragraph No. 12 you talk about  
14 the sick call requests.

15 **A Excuse me, this is in my primary -- my report,**  
16 **my Rule 26 report?**

17 Q Yeah, I'm sorry. I'm on page 20 of your  
18 primary report.

19 **A I'm there.**

20 Q And at point 12 you indicated that "The  
21 symptoms which Ms. Freiwald described over the  
22 weekend in her sick call requests were  
23 nonspecific and were not indicative of  
24 benzodiazepine withdrawal."

25 Did I read that correctly first of

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1 **A There is a -- there is a CIWA-B or**  
2 **benzodiazepine that some people use, and some**  
3 **people do use the CIWA score for**  
4 **benzodiazepines. I do not because of the**  
5 **nature of benzodiazepine withdrawal.**

6 Q Is the CIWA scale B a generally accepted tool  
7 for assessing symptoms of benzodiazepine  
8 withdrawal?

9 MS. SCHNEIDER: Object to the form.

10 **THE WITNESS: I would not call it**  
11 **generally accepted, and I do not use it in my**  
12 **practice.**

13 BY MR. GAHNZ:

14 Q So because you don't use it, that's the basis  
15 for your statement that it is not generally  
16 accepted as a tool in the -- in assessing  
17 benzodiazepine withdrawal?

18 **A Well, I guess -- so I'm an addiction medicine**  
19 **physician, and I have 20 years of practice**  
20 **detoxing people. And so if I don't use it,**  
21 **it's not accepted by me, and I would not say it**  
22 **is widely used or widely accepted. Those are**  
23 **the reasons that I don't think it is generally**  
24 **accepted. It is not a widely used tool.**

25 Q Are you aware of whether or not Brown County



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1 uses the CIWA assessment scale?

2 **A The CIWA assessment? I didn't -- I believe I**

3 **reviewed the CCS detox protocols, and yes, I do**

4 **believe they use it. They may even use the**

5 **benzo.**

6 (Exhibit No. 206 was marked.)

7 **THE WITNESS: By the way, we can**

8 **answer this line of questioning, but at some**

9 **point I need to go to the restroom just**

10 **whenever we get to it.**

11 MR. GAHNZ: Let's do that. Do you

12 want to break for lunch then too?

13 Let's go off the record.

14 THE VIDEOGRAPHER: We are off the

15 record at 11:54 a.m. This is the end of disc

16 number two in the deposition of Dr. Thomas

17 Fowlkes.

18 (Recess taken, 11:54 a.m. to 12:40 p.m.)

19 THE VIDEOGRAPHER: We are back on

20 the record at 12:40 p.m. This is the beginning

21 of disc number three in the deposition of

22 Dr. Thomas Fowlkes.

23 BY MR. GAHNZ:

24 Q Doctor, before the break I had handed you

25 Exhibit 206, which is the CIWA assessment scale

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1 Q All right. What are -- in the left-hand column

2 on the three pages what are -- what is the

3 purpose of those questions?

4 **A These are questions which are to be asked by**

5 **the rater, by the person who is filling out the**

6 **scale. And then they are to -- on each**

7 **question they are to score an answer from zero**

8 **to 4 depending on the response of the person.**

9 **And these are all I believe -- these**

10 **are all questions. What I mean by that is,**

11 **some scales -- some scales have observations as**

12 **well, but these are all questions and answers.**

13 Q Okay. And then on page 3, depending on the

14 answer provided by the -- by the examinee, I

15 guess --

16 **A By the patient, yes.**

17 Q Patient. Thank you. -- will tell whether or

18 not there's any -- the level of withdrawal?

19 **A According to this scale.**

20 Q Okay. And so do you know whether the questions

21 in the left-hand -- kind of the first column on

22 each of these three pages are asking about

23 symptoms that are related -- that are known

24 symptoms of benzodiazepine withdrawal?

25 **A Well, without stating the obvious, it's a scale**

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1 for benzodiazepines, correct?

2 **A Correct.**

3 Q And we had established prior to that this was a

4 scale that was used by Brown County in its

5 benzodiazepine withdrawal protocol?

6 **A I didn't -- I didn't agree that that is so. I**

7 **don't doubt it, but I don't recall specifically**

8 **that Brown County and/or CCS uses this. I**

9 **wouldn't doubt that they do. I'm not disputing**

10 **you, I'm just not agreeing to it without --**

11 Q So for purposes of these questions, can we

12 assume that it is, in fact, something that is a

13 screening tool used by Brown County?

14 **A Certainly.**

15 Q Okay.

16 **A And are you making a distinction by Brown**

17 **County as opposed to the CCS providers at Brown**

18 **County or --**

19 Q I'm saying the CCS providers at Brown County.

20 **A Okay.**

21 Q I understand that you don't use this particular

22 scale in your -- in your practice, correct?

23 **A That is correct.**

24 Q All right. Are you familiar with it however?

25 **A I am.**

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1 **for benzodiazepine withdrawal, and these are**

2 **questions that are felt to be related to**

3 **benzodiazepine withdrawal, yes.**

4 Q Do you take issue with any of the signs that

5 are listed in Exhibit 206?

6 **A I take issue with two things about this scale,**

7 **and I'll just tell them to you briefly.**

8 **Number one, many of these symptoms**

9 **are nonspecific, meaning that they are present**

10 **in a lot of other conditions besides**

11 **benzodiazepine withdrawal. That's one problem**

12 **I have with them in general.**

13 Q Sure.

14 **A And the second is that the most dangerous**

15 **withdrawal symptom of benzodiazepine is**

16 **seizures --**

17 Q Okay.

18 **A -- which is unrelated to the severity of**

19 **symptoms. So, in other words, this does not**

20 **predict who is or is not going to have a**

21 **seizure. That is another problem I have with**

22 **the scale in general.**

23 Q Is there another assessment tool that is, in

24 your opinion, generally accepted by the medical

25 community to assess benzodiazepine withdrawal?

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1 **A In my opinion, there is not. That is, there is**  
 2 **not a good assessment scale for**  
 3 **benzodiazepines -- or not a better. There's**  
 4 **not a better one. Some people use this. I do**  
 5 **not use it because I don't believe it is very**  
 6 **accurate.**  
 7 **Q But as far as you're aware, there is no other**  
 8 **scale that's in existence with respect to**  
 9 **benzodiazepine withdrawal?**  
 10 **A That would be better or in use more, no, that's**  
 11 **correct. You are correct.**  
 12 **Q All right. Early on in your report you talk**  
 13 **about in the scope of your -- let me pull it up**  
 14 **here -- scope of report how Ms. Freiwald's past**  
 15 **medical history and mental health conditions**  
 16 **influenced these opinions.**  
 17 **And what was it about Ms. Freiwald's**  
 18 **past medical history that impacted -- or**  
 19 **influenced any of your opinions?**  
 20 **A Well, this is my -- the scope of the work I was**  
 21 **doing. So I was provided this kind of thing**  
 22 **before I was -- in other words, to -- and there**  
 23 **is one that -- that I am usually asked and**  
 24 **might have been asked in this case and didn't**  
 25 **put here, an autopsy finding.**

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1 **gabapentin.**  
 2 **Q Okay.**  
 3 **A So -- and, I mean, there are other such -- I**  
 4 **mean, and she had the psychiatric history that**  
 5 **she had. So, yes, those impacted my opinion.**  
 6 **She had very severe emotional**  
 7 **disregulation.**  
 8 **Q And what do you base the severe emotional**  
 9 **disregulation conclusion on?**  
 10 **A On the Prevea. Primarily on the Prevea. And I**  
 11 **may not be saying that correctly. Might be**  
 12 **some --**  
 13 **Q P-R-E-V-E-A?**  
 14 **A Correct. Prevea? Prevea? Whatever it's**  
 15 **pronounced. On those records.**  
 16 **Q And those records are from the time frame of**  
 17 **March of 2016 through October of 2016?**  
 18 **A Yes.**  
 19 **Q Okay. Anything else that you base your**  
 20 **conclusion of emotional disregulation on?**  
 21 **A Well, her suicide attempt in February was very**  
 22 **consistent with emotional disregulation. I**  
 23 **don't know that those -- that terminology was**  
 24 **used by the doctors who were caring for her at**  
 25 **that time.**

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1 **So, in other words, I'm usually**  
 2 **asked how does a person's past medical history,**  
 3 **their autopsy findings influence my opinions.**  
 4 **That's part of the scope of work.**  
 5 **Q Okay.**  
 6 **A So, in other words, it could be the autopsy**  
 7 **wasn't in question or, in other words, we know**  
 8 **what the cause of her death was, but that's not**  
 9 **always the case.**  
 10 **Q Okay.**  
 11 **A So I'm usually asked to opine about that.**  
 12 **Q Okay. So then I guess I'll ask it more**  
 13 **broadly.**  
 14 **Was there anything about**  
 15 **Ms. Freiwald's past medical history that**  
 16 **influenced your opinions?**  
 17 **A I would say yes in a general way. One of them**  
 18 **is that I have very limited past medical**  
 19 **records.**  
 20 **Q Okay.**  
 21 **A So I have -- I have very limited past medical**  
 22 **records.**  
 23 **Number two, I saw that she had had a**  
 24 **serious suicide attempt in February of 2016**  
 25 **while she was taking both clonazepam and**

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1 **Q Will you define emotional disregulation for me,**  
 2 **please.**  
 3 **A Emotional disregulation is a mental health**  
 4 **symptom or condition, it's a sign -- so, in**  
 5 **other words, it's not a diagnosis -- that -- in**  
 6 **the best way that I can describe it in**  
 7 **nonmedical terminology, it is the inability to**  
 8 **normally regulate one's emotions as people**  
 9 **without that condition can.**  
 10 **So, in other words, most -- it's an**  
 11 **inability to regulate normal emotions. The**  
 12 **emotions swing from -- wildly one way or the**  
 13 **other. It's often described as lacking**  
 14 **emotional skin or being an emotional burn**  
 15 **victim.**  
 16 **So, in other words, I can give you**  
 17 **an example. In normal day-to-day interactions**  
 18 **with people we have -- we speak, we say hello**  
 19 **or whatever. If I don't speak to you today,**  
 20 **you don't take that -- you know, you are able**  
 21 **to determine that I might be in a bad mood or**  
 22 **might not like you or some other such thing.**  
 23 **People with emotional disregulation**  
 24 **take those very small slights and become**  
 25 **severely agitated over them or they have wild**

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1 emotional swings over what would be to the rest  
 2 of us normal interactions.  
 3 Q Is that a DSM diagnosis?  
 4 A It is not a diagnosis, as I said. It's not a  
 5 diagnosis. It is present in conditions. It is  
 6 a symptom that is present in conditions.  
 7 Q All right. Was that something that was known  
 8 to Dr. Fatoki in October of 2016?  
 9 A I do not believe so.  
 10 Q All right. Additional -- the previous suicide,  
 11 were any of the -- well, first of all, was  
 12 the -- the fact that Ruth Freiwald had  
 13 attempted suicide known to Dr. Fatoki?  
 14 A I believe he testified in his deposition he did  
 15 not know that.  
 16 Q Okay. And this may seem a little obvious, but  
 17 given the fact that he didn't know about the  
 18 previous suicide, it's also fair that he didn't  
 19 know the method by which she attempted suicide,  
 20 correct?  
 21 A I believe that is correct.  
 22 Q Okay. So at page 22, the first sentence of the  
 23 first full paragraph --  
 24 A Okay, I want to see which section this is. I'm  
 25 sorry, this is just my general opinions

Page 120

1 Q Okay. So there's a definition at page 39  
 2 that -- of nonacutely suicidal. And I think it  
 3 tracks with what you just told us. So if you  
 4 could read that into the record, that would be  
 5 great.  
 6 MR. SALEMI: Could we see it first,  
 7 please. Thank you.  
 8 THE WITNESS: Your instruction or  
 9 your question was for me to read that; is that  
 10 correct?  
 11 BY MR. GAHNZ:  
 12 Q The definition of nonacutely suicidal, please.  
 13 MS. SCHNEIDER: Can you just have  
 14 him identify the exact? I don't know that we  
 15 did the number of them.  
 16 BY MR. GAHNZ:  
 17 Q Sure. If you would start by identifying which  
 18 standard we're looking at.  
 19 A This is J-B-05, Suicide Prevention and  
 20 Intervention in the middle of page 39,  
 21 Definitions --  
 22 MR. SALEMI: Doctor, before you do  
 23 that, could you read the cover, too, and what  
 24 year that is?  
 25 THE WITNESS: Yes. This is the

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1 section. Let me just make sure I'm -- okay.  
 2 Q Okay. So this is still part of 14, correct?  
 3 A That is correct. In my opinions about the care  
 4 rendered by Dr. Fatoki in that section.  
 5 Q You're noted in that sentence that the BCJ  
 6 receiving screening did not show an acute  
 7 suicide risk.  
 8 What is an acute suicide risk?  
 9 A No evidence of present suicidal ideation or  
 10 intent. So, in other words, no evidence of --  
 11 present.  
 12 Q What is nonacute suicidal?  
 13 A A better terminology would be previous suicide  
 14 attempt or prior. So prior suicidal actions,  
 15 which is what Ms. Fatoki [sic] had --  
 16 Q I'm sorry?  
 17 A Which is what she had. She had a prior suicide  
 18 attempt, but no current ideation or intent.  
 19 Q All right. So pursuant to the NCCHC, would you  
 20 agree that at the point that Ms. Freiwald  
 21 checked into the Brown County Jail, she was a  
 22 nonacutely suicidal inmate?  
 23 A I don't -- I don't know whether I would agree  
 24 with that language or not without reviewing the  
 25 policy.

Page 121

1 NCC -- NCCHC Standards for Health Services in  
 2 Jails. This is the 2018 edition, which is not  
 3 the edition that I reviewed in this case.  
 4 BY MR. GAHNZ:  
 5 Q Okay.  
 6 A Well, it's not the -- it's not the edition that  
 7 was in place at this time, 2016. That would be  
 8 the 2014 edition.  
 9 Q Did they change the definition of nonacutely  
 10 suicidal?  
 11 A I don't know without comparing them. So this  
 12 is -- I mean --  
 13 Q Fair enough.  
 14 MR. SALEMI: And show a continuing  
 15 objection to you using the 2018 standards from  
 16 the NCCHC as irrelevant, but you can go ahead.  
 17 MS. SCHNEIDER: I'll join.  
 18 THE WITNESS: Okay. So the edition  
 19 that I reviewed and the edition that was in  
 20 effect at this time was 2014.  
 21 BY MR. GAHNZ:  
 22 Q All right. Do you have that -- where is that  
 23 book?  
 24 A Where is the book?  
 25 Q Yes, sir.

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1 **A On my book shelf in my office.**  
 2 Q All right. So that's one of the documents that  
 3 is not part -- you did not bring that with you  
 4 to your deposition today?  
 5 **A That's not true.**  
 6 Q Okay. May I have it?  
 7 **A Yes. That's the documents.**  
 8 Q So this is the 2014 edition?  
 9 **A Amongst -- amongst a bunch of other documents.**  
 10 Q All right. Okay. So I'm going to show you --  
 11 and feel free to scroll up and down on my  
 12 computer, it's a touch screen, if you would  
 13 like -- the standard for nonacutely suicidal  
 14 inmate as of 2014. Is that what I have up on  
 15 the screen?  
 16 **A It is.**  
 17 Q And that's the set of standards that you relied  
 18 on, correct?  
 19 **A That is correct.**  
 20 Q All right. And so can you read that -- that  
 21 definition?  
 22 **A Okay.**  
 23 MR. SALEMI: Which standard again?  
 24 What number?  
 25 **THE WITNESS: I'll go to it. I'll**

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1 "and/or have a recent prior history of  
 2 self-destructive behavior."  
 3 Did Ruth Freiwald have a recent  
 4 prior history of self-destructive behavior?  
 5 **A So I disagree that she met that definition of**  
 6 **nonacutely suicidal at all.**  
 7 Q Okay.  
 8 **A But so one can -- that is a -- I guess that is**  
 9 **a matter of judgment as whether -- as to**  
 10 **whether her suicide attempt six months prior**  
 11 **meets the definition of recent or not.**  
 12 Q Okay.  
 13 **A I would say not, but that's certainly subject**  
 14 **to argument.**  
 15 Q So reasonable minds could disagree?  
 16 **A On whether a six-month-ago suicide attempt was**  
 17 **recent or not, yes.**  
 18 Q And if one assumes that six months prior is  
 19 recent, would you agree that Ruth Freiwald was  
 20 a nonacutely suicidal inmate when she checked  
 21 in?  
 22 **A No. Because the first definition says like**  
 23 **present thoughts of suicide. She had no**  
 24 **present -- or no current suicidal ideation or**  
 25 **intent. Her screening was entirely negative**

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1 **tell you.**  
 2 BY MR. GAHNZ:  
 3 Q And I'll tell you it's much easier to use the  
 4 touch screen.  
 5 **A Okay. Oh, it's like literally the whole thing.**  
 6 **G -- I'm sorry. It's J-G-05, Suicide**  
 7 **Prevention Program.**  
 8 Q Okay.  
 9 MR. SALEMI: Thank you.  
 10 **THE WITNESS: And it is on page 119.**  
 11 **"NCCHC's definition of nonacutely suicidal**  
 12 **(potential or inactive) inmates are those who**  
 13 **express current suicidal ideation, for**  
 14 **example, expressing a wish to die without a**  
 15 **specific threat or plan and/or have a recent**  
 16 **prior history of self-destructive behavior."**  
 17 BY MR. GAHNZ:  
 18 Q Based on that definition, was Ruth Freiwald a  
 19 nonacutely suicidal inmate when she checked  
 20 into the jail on October 27, 2016?  
 21 **A No, she didn't meet even that definition. So**  
 22 **she wasn't suicidal in that way at all no.**  
 23 Q And one of the things that it says is recent  
 24 suicide. "But demonstrate other concerning  
 25 behaviors" -- well, hang on a second. It says,

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1 **for current.**  
 2 Q It says and, slash, or. Does that make a  
 3 difference to you? And I'll give it back to  
 4 you. I don't mean to --  
 5 **A I don't believe she met that criteria. I**  
 6 **mean -- because I would say in that -- in that**  
 7 **way -- and so the "or" would be a recent prior**  
 8 **history of self-destructive behavior. So, in**  
 9 **other words, I would interpret that to be I'm**  
 10 **not suicidal today, but yesterday I was -- you**  
 11 **know, I've just come from the hospital for a**  
 12 **suicide attempt. So something recent in -- my**  
 13 **definition of recent is not six months ago with**  
 14 **no current. No, I don't believe she meets that**  
 15 **definition.**  
 16 Q Now, you had a chance to look at all of the --  
 17 the treatment records, right?  
 18 **A All of the ones that were provided to me.**  
 19 Q Right. And you saw a bunch of them from Dawn  
 20 Vardis, right?  
 21 **A I saw a number of counseling sessions, yes.**  
 22 Q Right. She had almost 50 counseling sessions  
 23 between February and October, right?  
 24 **A I won't agree to that characterization of the**  
 25 **number. I don't -- because I don't know. I'm**



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1 **not disagreeing with you. I'm simply saying**  
 2 **you say it's 50; I don't know the number.**  
 3 Q All right.  
 4 A **It was a number of them.**  
 5 Q So I guess to meet the definition of "recent"  
 6 in your mind, how much time between the event  
 7 and the check-in would be required?  
 8 A **Well, that wasn't the -- the question you asked**  
 9 **me before was did I think that she met --**  
 10 Q I understand.  
 11 A **-- NCCHC's definition of nonacutely suicidal.**  
 12 **And according to this definition here, I don't**  
 13 **believe that she did.**  
 14 Q And I absolutely understand that --  
 15 A **Okay.**  
 16 Q -- and we're on to the next question.  
 17 A **And would you please repeat that question?**  
 18 Q Sure.  
 19 In order to be in your mind a recent  
 20 suicide or self-destructive behavior, how much  
 21 time would you allow to lapse between the event  
 22 or the self-destructive behavior and the  
 23 check-in to jail?  
 24 A **In what context?**  
 25 Q In the context of meeting the definition that

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1 A **So you're now -- you're now asking me**  
 2 **hypothetical questions, and it depends on the**  
 3 **circumstances of each case. So each case might**  
 4 **be different, in other words. In one person**  
 5 **vague suicidal ideation a month ago might be**  
 6 **recent. On the other hand, you know,**  
 7 **passing -- it depends on what you're talking**  
 8 **about. Was it a suicide attempt? How serious**  
 9 **was the suicide attempt? When was it? Those**  
 10 **hypotheticals are -- vary by case to case.**  
 11 **What I said was in this case it**  
 12 **wasn't recent in my definition; it was six**  
 13 **months before, and that's not recent. I**  
 14 **don't -- I can't give you a broad answer. If**  
 15 **it was a very serious suicide attempt a week**  
 16 **before, that would be recent.**  
 17 Q Okay. So we've now narrowed it down to a week?  
 18 A **That's right.**  
 19 Q All right. If Ruth Freiwald had attempted the  
 20 exact same type of suicide two weeks before she  
 21 checked in, would that meet the definition?  
 22 A **Well, now it depends on what amount of -- what**  
 23 **kind of treatment she has between now --**  
 24 **between now and then, none of which -- and the**  
 25 **most important factor is whether she's**

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1 we've been talking about, sir.  
 2 MS. SCHNEIDER: Object as vague and  
 3 overly broad, but go ahead.  
 4 **THE WITNESS: Okay. Well, two**  
 5 **different things. So you're asking me now how**  
 6 **recent would it have to be in order to meet**  
 7 **this definition, which, again, has nothing to**  
 8 **do with the opinion that I have here in my**  
 9 **report about her not having current suicidal.**  
 10 **So she did not have current suicidal ideation**  
 11 **or intent.**  
 12 **She had a suicide attempt, a very**  
 13 **serious suicide attempt, approximately six**  
 14 **months prior. That is not recent in my**  
 15 **definition.**  
 16 BY MR. GAHNZ:  
 17 Q All right. Are you done with your answer?  
 18 A **Yes.**  
 19 Q Move to strike as nonresponsive.  
 20 The question is, how much time? A  
 21 week? A month? Two months? Three months? So  
 22 let me just finish the question. Had  
 23 Ms. Freiwald attempted suicide a month before  
 24 she was checked into jail, would that meet the  
 25 definition of nonacute suicide?

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1 **currently suicidal, which she was not, and in**  
 2 **your hypothetical you haven't told me anything**  
 3 **differently about.**  
 4 Q If she's currently suicidal, doesn't that  
 5 change her to the acutely suicidal definition  
 6 as opposed to the nonacutely suicidal?  
 7 A **No. Because this says nonacutely suicidal,**  
 8 **in- -- there's something that's gotten in the**  
 9 **way -- inmates who express current suicidal**  
 10 **ideation without a specific threat or plan.**  
 11 **So, in other words, vague present suicidal**  
 12 **ideation, no intent or plan.**  
 13 Q All right. So --  
 14 A **So acutely suicidal is present ideation with --**  
 15 **with plan --**  
 16 Q Okay.  
 17 A **-- or intent.**  
 18 Q So you won't give -- if Ruth Freiwald had  
 19 attempted suicide in the exact same manner that  
 20 she did in February of 2016 two weeks before  
 21 she checked into the jail, you're not willing  
 22 to say that that's a recent suicide or  
 23 self-destructive behavior?  
 24 A **No. What I said was that when you go much**  
 25 **beyond a week or so, then it depends on the**

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**1 other circumstances, how serious the attempt**  
**2 was, what treatment they have received in the**  
**3 meantime, whether they were, you know, now**  
**4 judged stable by another mental health**  
**5 professional. All those kinds of factors come**  
**6 into it which are all hypothetical and don't**  
**7 apply in this case.**  
**8 Q Did anybody from Nurse Jones, Nurse Blozinski,**  
**9 or Dr. Fatoki go through the analysis that you**  
**10 just went through to determine whether or not**  
**11 Ruth Freiwald was nonacutely suicidal when she**  
**12 checked into the jail?**  
**13 MR. SALEMI: Object to form.**  
**14 MS. SCHNEIDER: Join.**  
**15 THE WITNESS: So it was my**  
**16 understanding that the suicide screening was**  
**17 done by a correctional officer, and**  
**18 Ms. Freiwald was allowed to go to the Huber**  
**19 center. And so that was done on the night of**  
**20 her intake, and those nurses that you just**  
**21 described were not present on that night.**  
**22 BY MR. GAHNZ:**  
**23 Q Same with Dr. Fatoki, correct?**  
**24 A Correct.**  
**25 Q And as far as you know -- well, let me back up.**

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**1 A Or I should say that I have that opinion for**  
**2 that whole period of time.**  
**3 Q Okay. I just wanted to make sure that we**  
**4 were -- is there any other basis for that**  
**5 opinion?**  
**6 A The records and the deposition testimony**  
**7 that --**  
**8 Q Anything in specific that you can point us to?**  
**9 A Well, as a for instance, the -- Dr. Fatoki said**  
**10 he -- he had no information that she was**  
**11 suicidal; the nurses, the same thing, they had**  
**12 no information that she was voicing suicidal**  
**13 ideation or intent while she was at the Huber**  
**14 center or anytime she was at the jail.**  
**15 Q All right. In looking at your 50-odd pages of**  
**16 report I didn't see anything in there about**  
**17 blood pressure monitoring. Did I miss that?**  
**18 A Did you -- first -- first of all, what do you**  
**19 mean? Yes, I saw where the nurse who reviewed**  
**20 her screening form said that -- noted that**  
**21 Mrs. Freiwald was on blood pressure medicine**  
**22 and said that she should have blood pressure**  
**23 checks, yes.**  
**24 Q Is that anywhere in your 50-odd pages of your**  
**25 report?**

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**1 It's also true that neither**  
**2 Dr. Fatoki, Nurse Jones, nor Nurse Blozinski**  
**3 ever reviewed the suicide screening to make the**  
**4 determination as to whether or not Ruth**  
**5 Freiwald was either acutely or nonacutely**  
**6 suicidal?**  
**7 A I believe that was their deposition testimony.**  
**8 Q All right. No. 15, your opinion is that**  
**9 Ms. Freiwald's suicide on 11/2/2016 was neither**  
**10 reasonably foreseeable nor preventable by**  
**11 Dr. Fatoki or the CCS staff; is that correct?**  
**12 A That is correct.**  
**13 Q What is your basis for this opinion?**  
**14 A My basis for this opinion is that there is no**  
**15 indication in the records that I reviewed that**  
**16 either Dr. Fatoki or the CCS nurses were aware**  
**17 of any suicidal ideation, any suicidal actions,**  
**18 any suicidal statement, or any behaviors by**  
**19 Ms. Freiwald which would indicate to them or to**  
**20 reasonable providers that she was at risk of**  
**21 suicide on that day.**  
**22 Q All right. What about at any time between her**  
**23 entry into the jail and November 2nd?**  
**24 A That opinion still applies.**  
**25 Q All right. And --**

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**1 A Let's see. It was contained on that screening**  
**2 form, on the notation by I believe it was Nurse**  
**3 Dennisen.**  
**4 Q Okay.**  
**5 A And the copy that I have doesn't have the**  
**6 handwritten part.**  
**7 Q Okay. So -- and that would have been part of**  
**8 the information that was provided to you, was**  
**9 that there had been an order for blood pressure**  
**10 checks for three -- three straight days, right?**  
**11 A I don't know if one would classify that as an**  
**12 order. I don't believe it was given by a**  
**13 provider. I believe that there might -- I**  
**14 believe that the nurses and perhaps**  
**15 Dr. Fatoki -- although I don't believe he**  
**16 commented on it directly -- was that -- that**  
**17 there was sort of a standing policy or protocol**  
**18 to check blood pressure medicine on people who**  
**19 came into the jail but without their blood**  
**20 pressure medicine. So that was a standard**  
**21 practice of theirs.**  
**22 Q Were there any blood pressure checks that were**  
**23 done on Ms. Freiwald?**  
**24 A No, because she didn't remain at the Brown**  
**25 County Jail. She went to the Huber center**

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1 **where there's not normally a nurse stationed.**  
 2 Q So should there have been blood pressure checks  
 3 done?  
 4 A No.  
 5 Q All right. How come?  
 6 A Well, number one, Ms. -- Ms. Freiwald didn't  
 7 bring her medication, so she wasn't on her  
 8 medications. When her medications were  
 9 received, they were approved and started, and  
 10 the nurse over the weekend made an appointment  
 11 to assess Ms. Freiwald the next time that there  
 12 was nursing sick call there or something -- or  
 13 see a provider. I forget the exact language.  
 14 Q Where is that?  
 15 A HRBACCS000018.  
 16 Q Okay.  
 17 A The response of the nurse on 10/29 was "Next  
 18 available appointment with HSU for blood  
 19 pressure check. Meds to be reviewed with M.D."  
 20 Q So do you know whether an appointment was  
 21 actually made?  
 22 A I do not.  
 23 Q Do you know when the next time HSU staff went  
 24 to the Huber facility?  
 25 A I do not.

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1 it's your opinion that the request for medical  
 2 care did not trigger a requirement by any HSU  
 3 staff to go see Ms. Freiwald?  
 4 MS. SCHNEIDER: Asked and answered.  
 5 THE WITNESS: That is correct, to go  
 6 see her in person. They took action by  
 7 starting her on her blood pressure medicine,  
 8 which was appropriate.  
 9 BY MR. GAHNZ:  
 10 Q All right. And can you point to any standard  
 11 that supports that opinion?  
 12 MS. SCHNEIDER: Object to the form,  
 13 but go ahead and answer it if you can.  
 14 THE WITNESS: I don't think that I  
 15 can. There aren't standards that address that  
 16 specific issue. Sick call requests need to be  
 17 responded to, and hers was responded to. There  
 18 are standards that say that, but that's the  
 19 only standard I could point.  
 20 BY MR. GAHNZ:  
 21 Q And this is something that would fall within  
 22 nursing expertise, right?  
 23 A No, I wouldn't say so.  
 24 Q Okay. Although a nurse has testified as to the  
 25 nursing standards that would apply to -- to

1 Q Is there any indication that a blood pressure  
 2 check of any sort was ever done?  
 3 A There is not.  
 4 Q If somebody had done a blood pressure check on  
 5 Ruth Freiwald, would you anticipate that there  
 6 would be a notation of that?  
 7 A I -- I would believe that there would be, yes.  
 8 Q All right. Based on the medical slip that you  
 9 have in front of you, did that trigger any sort  
 10 of requirement for any HSU staff to go see  
 11 Ms. Freiwald?  
 12 A No.  
 13 Q How come?  
 14 A Well, for one thing, this request was written  
 15 on 10/28 at 5:00 p.m., which I believe was  
 16 Friday at 5:00 p.m. It was responded to the  
 17 next day. And at that time they had  
 18 Ms. Freiwald's blood pressure medications which  
 19 they reviewed with Dr. Fatoki. And he issued  
 20 the orders, and they sent them to the Huber  
 21 center the next day, on Sunday. So they did  
 22 make a response. Their -- I mean, their  
 23 response was starting her on her blood pressure  
 24 medicine.  
 25 Q My question is a little bit different, that

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1 that request, correct?  
 2 A Well, I think it is an overall correctional  
 3 health care -- so delivery of care issue. I  
 4 believe it's within that area of expertise. A  
 5 nurse might well be able to opine about that,  
 6 yes.  
 7 Q And Nurse Ward opined that upon receipt of the  
 8 October 28, 2016, medical request, that HSU  
 9 staff was required by nursing standards to go  
 10 see in person Ms. Freiwald. Is that your -- is  
 11 that a fair recitation of one of her opinions?  
 12 MR. SALEMI: I'll object to form,  
 13 yeah, asking him to characterize another  
 14 witness's opinions. But you can if you can.  
 15 MS. SCHNEIDER: And also just  
 16 objection. He hasn't seen the actual testimony  
 17 of Nurse Ward. But go ahead if you remember  
 18 the opinions from her report.  
 19 THE WITNESS: I don't recall it word  
 20 for word. I will take your word for it that --  
 21 I recall something very similar to that. I  
 22 don't know that she had that very specific  
 23 opinion as you worded it, but I don't doubt  
 24 that she has that opinion.  
 25

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1 BY MR. GAHNZ:

2 Q All right. And do you recall when you read her

3 reports that she cited to specific nursing

4 standards, right?

5 A I recall she -- she had lots of opinions and --

6 yes, she cited lots of different standards. I

7 might have commented about that specific one.

8 Just a moment. If you could point me to that

9 specific opinion of hers within her report, I

10 could comment.

11 Q No, I can't. I'm just asking you whether or

12 not you're aware that she had cited to nursing

13 standards with respect to that report -- or to

14 that opinion. And if you can't, that's fine.

15 I mean --

16 A Well, if you'll give me just a moment, I will

17 review her report and see if I can find that

18 specific opinion and which standard. I don't

19 recall which standard she applied. That's what

20 I'm trying to determine.

21 Q All right. So would you defer to Nurse Ward's

22 nursing opinion with respect to whether or not

23 Blozinski and/or Jones or HSU was required to

24 see Ms. Freiwald after the -- receiving the

25 10/28 medical slip?

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1 overseeing the practice of nurses in a health

2 care setting.

3 Q One of the things that you say at page 24 in

4 subsection B, 19(B) --

5 A I'm there.

6 Q -- was that "Ms. Freiwald was housed at a

7 remote location that normally has relatively

8 little interaction with the BCJ since inmates

9 at the Huber center go to outside providers."

10 Is that something that would have

11 been known to Dr. Fatoki on October 27, 2016?

12 A What portion of that?

13 Q The whole thing.

14 A Well, number one, Dr. Fatoki was the medical

15 director of the Brown County Jail. I don't

16 know -- I mean, one would make a logical

17 assumption that he knew how -- and, in fact, I

18 think he testified at his deposition that he

19 knew that Huber center inmates were to go to

20 outside providers. He was also responsible for

21 authorizing what medicines would or wouldn't be

22 taken there, so yes, I think he was aware of

23 how health care was delivered at the Huber

24 center.

25 Q And he was also aware that it was a remote

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1 A Absolutely not.

2 Q Okay. And same question with respect to

3 October 31st. Was that also a request for

4 medical care?

5 A The request was actually not made on

6 October the 31st. It was made on October the

7 30th, Sunday.

8 Q All right. On October the 30th did anybody go

9 see Ms. Freiwald?

10 A I believe that the nurses did not go to the

11 Huber center but instead sent her blood

12 pressure medications. In fact, that's what's

13 documented.

14 Q Is it your opinion that the

15 October 30th request did or did not require HSU

16 staff to go see Ms. Freiwald in person?

17 A Did not.

18 Q And your basis for -- for that opinion is what?

19 A My more than 20 years of experience as a

20 correctional health care both provider and

21 administrator and medical director.

22 Q It's not based on any particular nursing

23 expertise, though, correct?

24 A I have substantial experience training,

25 supervising, writing protocols for and

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1 location?

2 A Well, I can't speak for Dr. Fatoki, but, I

3 mean, I believe he should -- he was aware that

4 the Huber center was not located at the same

5 place as the Brown County Jail, yes. I don't

6 know one way or the other, but it would seem

7 reasonable that he would know that.

8 Q Okay. Is high blood pressure a serious medical

9 condition?

10 MS. SCHNEIDER: Object to the form;

11 vague and overly broad.

12 THE WITNESS: It can or cannot be.

13 So it's not in every situation.

14 BY MR. GAHNZ:

15 Q All right. And what makes high blood pressure

16 a serious medical condition?

17 A The extent of its control or lack of control

18 and the complications related thereto.

19 Q Do you have an opinion as to whether or not

20 Ms. Freiwald's high blood pressure was a

21 serious medical condition?

22 A I don't have any indication that it was. In

23 other words, I have no evidence to show me that

24 it was a serious medical condition. It

25 needed -- it was a chronic medical condition



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1 that needed treatment and was treated.  
 2 Q Okay.  
 3 A But I don't believe it was a serious medical  
 4 condition at the time she was at the Brown  
 5 County Jail.  
 6 Q You indicated -- and I think we've covered  
 7 this, but I just want to make sure -- that you  
 8 believe that the gabapentin was prescribed off  
 9 label for chronic pain.  
 10 Have we gone through the entire  
 11 basis of that belief?  
 12 A I think so. I will add, though, that it could  
 13 well have been prescribed for mood stabilizing  
 14 purposes or prescribed or continued by the  
 15 Prevea behavioral health care providers. In  
 16 other words, I'm not saying that they didn't  
 17 continue it because of its mood stabilizing  
 18 properties, but I don't believe it was  
 19 originally prescribed for that purpose. And I  
 20 certainly didn't see that it was prescribed for  
 21 seizures.  
 22 Q All right. What is rebound anxiety?  
 23 A Well, there are -- there are probably multiple  
 24 definitions. It depends on what circumstance.  
 25 In this type of scenario what I

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1 dose.  
 2 Number three, there was evidence in  
 3 the record that she was not taking it at the  
 4 dose -- at the dose that it had been  
 5 prescribed. So it was a low dose, and it was  
 6 appropriate to stop it suddenly with the --  
 7 Also, Dr. Fatoki didn't just stop it  
 8 suddenly. He asked for him to be notified if  
 9 there were signs of withdrawal, which did not  
 10 occur.  
 11 Q Okay. There were no signs of withdrawal?  
 12 A Well, he certainly wasn't notified of any signs  
 13 of withdrawal, and yes, there were no specific  
 14 signs of benzodiazepine withdrawal.  
 15 Q Now, when you give testimony in cases like  
 16 this, do you use the same set of standards and  
 17 rigor that you do when you're presenting to  
 18 doctors at conventions and other times when you  
 19 give presentations?  
 20 MS. SCHNEIDER: Object to the form.  
 21 THE WITNESS: I'm not sure how to  
 22 answer that question. I mean, I -- I would say  
 23 that the preparation of a presentation no, does  
 24 not have the same degree of rigor as my  
 25 opinions here in this case. I mean, I teach --

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1 believe you're referring to would be the  
 2 presence of anxiety after stopping antianxiety  
 3 medications.  
 4 Q Okay. Assume that that's what I'm talking  
 5 about.  
 6 A Right. That's -- I mean, that's -- that would  
 7 be relevant to this case.  
 8 Q And when does that happen?  
 9 MS. SCHNEIDER: Object to the form  
 10 as vague and overly broad depending on the  
 11 circumstances, but go ahead.  
 12 THE WITNESS: Exactly what she just  
 13 said. I can't tell you a specific time. I  
 14 mean, it depends on the circumstances.  
 15 BY MR. GAHNZ:  
 16 Q Are you critical of Dr. Fatoki for abruptly  
 17 stopping the clonazepam?  
 18 A Not in this circumstance.  
 19 Q All right. How come?  
 20 A Because, number one, clonazepam is one of the  
 21 longer-acting benzodiazepines, and it has a  
 22 property where essentially it -- you can  
 23 self-taper. In other words, it can taper  
 24 itself off.  
 25 Number two, this was a very low

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1 there's informal teaching, there's informal  
 2 lectures. So no, it doesn't have the same  
 3 rigor.  
 4 BY MR. GAHNZ:  
 5 Q All right. Can you point me to any literature  
 6 that supports the contention that it is  
 7 appropriate to stop a patient's use of  
 8 clonazepam without a taper abruptly?  
 9 A So I believe that what you're asking me doesn't  
 10 exist in the literature, in other words, that  
 11 it doesn't exist either way. There is no  
 12 literature that says this particular dose or  
 13 this particular length of prescribing or this  
 14 particular situation always requires tapering  
 15 or this other situation doesn't. So, in other  
 16 words, it's a case-by-case basis. It depends  
 17 on the length of time they've been prescribed  
 18 it, the dose they've been prescribed, and the  
 19 compliance with it. So there wouldn't be any  
 20 literature that would definitively set that  
 21 out.  
 22 Q Well, you would agree with me that there's a  
 23 fair number of warnings not to stop clonazepam  
 24 abruptly?  
 25 MS. SCHNEIDER: Object to the form.

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1 **THE WITNESS: It shouldn't --**  
 2 MR. SALEMI: Presents an incomplete  
 3 hypothetical. You can answer.  
 4 **THE WITNESS: It is generally a true**  
 5 **statement that benzodiazepines which have been**  
 6 **prescribed over a long period of time and in**  
 7 **high enough doses should not be stopped**  
 8 **suddenly, that is correct.**  
 9 BY MR. GAHNZ:  
 10 Q And, in fact, that's -- you teach various  
 11 doctors not to abruptly stop benzodiazepines,  
 12 correct?  
 13 A **There are safe tapering strategies, yes, that's**  
 14 **correct.**  
 15 Q That wasn't my question though.  
 16 My question was, you teach --  
 17 MR. SALEMI: Can you read that  
 18 question again, please.  
 19 (Last question read.)  
 20 BY MR. GAHNZ:  
 21 Q Can you answer that question, Doctor?  
 22 A **Would you read back my answer?**  
 23 MR. SALEMI: Yeah, I'll ask that.  
 24 Would you please.  
 25 (Last answer read.)

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1 Q Well, that's what I was going to ask you is  
 2 when -- when was this?  
 3 A **I don't know. I don't know where you obtained**  
 4 **it from, so I don't know which one it is.**  
 5 Q Well, I can tell you that it's at least past  
 6 2016, because if you look at this Bachhuber  
 7 scale, B-A-C-H -- or Bachhuber scale,  
 8 B-A-C-H-H-U-B-E-R, it has a date of 2016 on it,  
 9 correct?  
 10 A **Right. So it may be one of my more recent ones**  
 11 **from 2017 or '18. Since this incident.**  
 12 MR. SALEMI: I'm sorry, has this  
 13 been disclosed?  
 14 MR. GAHNZ: No.  
 15 MS. SCHNEIDER: Then show an  
 16 objection. We have document production demands  
 17 on -- just for the purposes of my making my  
 18 objection and moving on, I believe we have  
 19 document production demands -- although I'm a  
 20 little late to this case -- that would have  
 21 covered production of documents such as this.  
 22 MR. GAHNZ: How would I have  
 23 document -- how would I have the doctor's  
 24 documents in my possession? How would that be  
 25 a plaintiff's responsibility to provide

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1 MR. SALEMI: Thank you.  
 2 BY MR. GAHNZ:  
 3 Q All right. So I'll move to strike as  
 4 nonresponsive.  
 5 The question is, you teach doctors  
 6 not to stop benzodiazepines abruptly, correct?  
 7 MS. SCHNEIDER: Asked and answered.  
 8 **THE WITNESS: So I you teach doctors**  
 9 **safe prescribing practices, which includes not**  
 10 **stopping benzodiazepines suddenly when they**  
 11 **have been prescribed in high doses over long**  
 12 **periods of time, yes, that's correct.**  
 13 (Exhibit No. 207 was marked.)  
 14 BY MR. GAHNZ:  
 15 Q Doctor, I'm showing you what we've marked as  
 16 Exhibit 207. Do you recognize this document?  
 17 A **I do.**  
 18 Q What is this document?  
 19 A **This is a printout from a PowerPoint**  
 20 **presentation on benzodiazepines. One thing**  
 21 **that I will say is that -- that I'm not certain**  
 22 **of is what date. I had given a very**  
 23 **similar-appearing presentation over a number**  
 24 **of -- at a number of times, so I'm not sure**  
 25 **what date this was from.**

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1 documents that were created by an expert in  
 2 this case? I'm allowed to use documents to  
 3 cross-examine the doctor. So you can make your  
 4 objection, but I'll tell you that I found it  
 5 when I was doing my research for this  
 6 deposition, and I don't think there's any  
 7 responsibility that I had to provide  
 8 cross-examination documents to the other side  
 9 prior to my cross-examination.  
 10 MR. SALEMI: Yeah, I disagree. I  
 11 think once you developed this document -- once  
 12 you acquired it, that it was subject to the  
 13 pending document production demands and you are  
 14 obligated to supplement your disclosures. And  
 15 my objection is that you failed to do so.  
 16 And I'm only doing that in a general  
 17 sense because as I sit here, I didn't draft the  
 18 document production demands in this case, I'm  
 19 not 100 percent positive that it is covered. I  
 20 believe the routine ones that myself and my  
 21 partner use it would have been covered, and so  
 22 I'm just making my objection.  
 23 MR. GAHNZ: So -- well, I'll  
 24 respond. One, my mental impressions and my  
 25 research are work product and aren't -- and

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1 aren't subject to disclosure. Two, it is  
 2 disclosed at this time, so -- which is prior to  
 3 trial, in the deposition. So given when your  
 4 experts provided their reports, it would  
 5 absolutely be a timely supplement today in any  
 6 event. But let's not waste a lot of record  
 7 time on this. Let's move on.  
 8 MR. SALEMI: That's fine with me.  
 9 MR. GAHNZ: Okay.  
 10 BY MR. GAHNZ:  
 11 Q All right. So one of the things that you put  
 12 in this PowerPoint is that you have nothing to  
 13 disclose in that you are not the biggest  
 14 advocate for benzodiazepine. That's at page 4.  
 15 A **That's not exact. I mean, you didn't exactly**  
 16 **state it correctly. I don't have anything to**  
 17 **disclose except perhaps to say I am not the**  
 18 **biggest fan of benzodiazepines.**  
 19 Q Thank you for that clarification.  
 20 A **And there is a further disclosure that some of**  
 21 **these opinions presented in this presentation**  
 22 **are my own opinion as opposed to information**  
 23 **from the literature.**  
 24 Q Fair enough.  
 25 And as you go through this

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1 **their lipophilicity. So the point is at**  
 2 **different characteristics that characterize how**  
 3 **benzodiazepines are handled by the body, how**  
 4 **they're metabolized and the effects on the**  
 5 **body.**  
 6 Q Okay. So the clonazepam dose that is shown  
 7 both on the pharmacokinetics properties of  
 8 benzodiazepine and the benzodiazepines' potency  
 9 page is .25 milligrams, correct?  
 10 A **That's correct.**  
 11 Q And is that because that's the standard dosage  
 12 for clonazepam?  
 13 A **No. It's -- it's the dose that's equivalent to**  
 14 **the standard that is used. If you go to the**  
 15 **second page, it shows it better.**  
 16 Q Okay.  
 17 A **Valium 5 milligrams. So, in other words, what**  
 18 **milligram is equivalent to 5 milligrams of**  
 19 **Valium for each of these benzodiazepines, not**  
 20 **that it's a standard dose. It's just a**  
 21 **equi- -- it's an equipotency table.**  
 22 Q And what's it -- I'm sorry, you said what was  
 23 the drug that it was based off of?  
 24 A **Valium, the top one. Diazepam.**  
 25 Q Okay. And it's your understanding that -- or

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1 PowerPoint, you put in parentheses those  
 2 opinions that -- you say "my opinion"?  
 3 A **I tried, yes.**  
 4 Q Okay. All right.  
 5 A **That's right.**  
 6 Q So I want to go to the benzodiazepines potency  
 7 page of the PowerPoint. It's about -- these  
 8 pages unfortunately are not numbered, so  
 9 it's --  
 10 A **Okay.**  
 11 Q For your -- it looks like this.  
 12 A **Okay. I'm familiar with it. I'll try to get**  
 13 **to it.**  
 14 MS. SCHNEIDER: How far into it  
 15 would you say it is?  
 16 MR. GAHNZ: About halfway.  
 17 **THE WITNESS: I'm there.**  
 18 BY MR. GAHNZ:  
 19 Q What is the purpose of the Benzodiazepines  
 20 Potency slide?  
 21 A **Well, certain -- the page before that actually**  
 22 **has the same information in -- this bigger --**  
 23 **it tells the pharmacokinetics of**  
 24 **benzodiazepines depend on their potency, their**  
 25 **onset of action, their duration of action,**

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1 what's your understanding as to the dosage that  
 2 Ms. Freiwald was receiving for clonazepam?  
 3 A **I believe it was 1 milligram at nighttime and a**  
 4 **half a milligram as needed. I don't know that**  
 5 **it had a particular hour instruction on there.**  
 6 **I don't believe that was written. At least the**  
 7 **way -- I don't know if it was on the label, but**  
 8 **it wasn't written on the form.**  
 9 **So a dose of 1 milligram a day,**  
 10 **which is a relatively low dose.**  
 11 Q And that would be equivalent to 20 milligrams  
 12 of Diazepam?  
 13 A **That's correct.**  
 14 Q Okay. So a couple pages in past that, two  
 15 pages past that, you have a special note.  
 16 What -- what's going on on this page?  
 17 A **Let me get to it. Let me get to the page.**  
 18 **Special note non- -- this page?**  
 19 Q Yeah, the non-U.S. benzo.  
 20 A **Okay.**  
 21 MS. SCHNEIDER: Are you asking him  
 22 what his intent was in creating this slide for  
 23 this specific presentation?  
 24 MR. GAHNZ: Right.  
 25 **THE WITNESS: Okay. It is that**

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1 there exists a benzodiazepine that's not  
 2 available in the United States. It's called  
 3 flunitrazepam. It goes by the brand name  
 4 Rohypnol in Mexico. And it's sold as a  
 5 hypnotic or a sleep medication, but it's used  
 6 as a date rape drug. It's called roofies. So  
 7 it's -- this is a special case. We can't  
 8 get -- we don't get it in America by the legal  
 9 market, but it's available on the street and  
 10 you have to watch out for it. It causes severe  
 11 amnesia.  
 12 BY MR. GAHNZ:  
 13 Q So down in the bottom right corner there's a  
 14 meme that reads: "Rohypnol - When Traditional  
 15 Dating Methods Aren't Just Cutting It."  
 16 Is that something that you put into  
 17 this presentation?  
 18 A Yes.  
 19 Q And why?  
 20 A Because I was trying to point out that roofies,  
 21 which are known as a date rape drug, are used  
 22 for these purposes. So this -- for instance,  
 23 this is a -- just came off the internet. It's  
 24 a guy holding an unresponsive female. So  
 25 roofies will make a person unresponsive and

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1 A Correct.  
 2 Q And who is Sadock, et al., 2009?  
 3 A Well, it -- that is a literature reference. I  
 4 don't know who Sadock is, but that's -- that's  
 5 a literature reference to an article or a  
 6 publication by Sadock from 2009.  
 7 Q All right. And the information that's  
 8 contained on this slide you derived from  
 9 reading this Sadock, et al. article?  
 10 A That's what this is in -- I don't know -- I  
 11 can't say that. I don't know whether it was an  
 12 article or chapter. I don't recall at this  
 13 moment. I don't have the reference list.  
 14 Let's see if the -- in the back. No, it's  
 15 Sadock, et al. Kaplan and Sadock's  
 16 "Comprehensive Textbook of Psychiatry,"  
 17 9th edition, in 2009.  
 18 Q And that's contained somewhere in the couple  
 19 pages where the references are?  
 20 A It's where the references are. So, yes, it's  
 21 what reference that is.  
 22 Q Okay. And so the question was, did you draw  
 23 the information contained in this PowerPoint  
 24 slide from this textbook?  
 25 A Well, that's what that reference is. I don't

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1 subject to date rape. It's a very serious  
 2 condition.  
 3 Q Okay. Going back about six or seven pages,  
 4 Long-Term Use of Benzodiazepine.  
 5 Tell me when you get to that slide.  
 6 A Going back? How far back?  
 7 Q Towards the back of the page. It looks like  
 8 this.  
 9 MS. SCHNEIDER: Move --  
 10 THE WITNESS: I went the other --  
 11 I'm sorry, I went the wrong way.  
 12 BY MR. GAHNZ:  
 13 Q Toward the back of the document.  
 14 A I'm sorry. My apologies.  
 15 MS. SCHNEIDER: What was it called  
 16 again?  
 17 MR. GAHNZ: Long-Term Use of  
 18 Benzodiazepines.  
 19 THE WITNESS: How many pages going  
 20 back?  
 21 BY MR. GAHNZ:  
 22 Q Seven pages past the roofie meme.  
 23 A Okay. Okay. I'm there.  
 24 Q So long-term use is greater than eight to  
 25 twelve months?

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1 recall doing that, but that's what the  
 2 reference means, yes.  
 3 Q Thank you. All right.  
 4 So long-term use is greater than or  
 5 equal to eight to twelve months; is that right?  
 6 A That's what this slide says, yes, and I agree  
 7 with that.  
 8 Q Okay. And Ms. Freiwald was on benzodiazepine  
 9 for -- benzodiazepines long term, correct?  
 10 A That's not correct.  
 11 Q That's not correct?  
 12 A That's not correct.  
 13 Q Okay. What about that is incorrect?  
 14 A Well, she was on benzodiazepines prior to her  
 15 suicide attempt in February.  
 16 Q Right.  
 17 A She had an overdose on benzodiazepines; they  
 18 were stopped. She was detoxed, so she was no  
 19 longer on them, and then they were restarted in  
 20 March.  
 21 Q Okay.  
 22 A And so March to October is less than eight to  
 23 twelve months. So she was not on long-term  
 24 benzos.  
 25 Q All right. Is there any documentation to show



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1 that the benzodiazepine was out of her system  
 2 prior to it being restarted in March?  
 3 **A I am not aware of any documentation of that.**  
 4 **But based upon the time course, it would be my**  
 5 **opinion based on my practice and experience**  
 6 **they would have been out of her system.**  
 7 Q You are a pharmacology expert?  
 8 **A No. I'm a board-certified addiction medicine**  
 9 **doctor.**  
 10 Q All right. Did you do any sort of  
 11 pharmacological evaluation to determinate -- to  
 12 determine whether or not the benzodiazepines  
 13 that Ms. Freiwald ingested in February of 2016  
 14 were out of her system prior to restarting her  
 15 on benzodiazepines?  
 16 MS. SCHNEIDER: Beyond his education  
 17 and experience?  
 18 **THE WITNESS: I never -- I never saw**  
 19 **Ms. Freiwald, I never did any tests on her.**  
 20 **And so I have no -- I didn't do any test to**  
 21 **determine anything about her blood -- drugs in**  
 22 **her system.**  
 23 BY MR. GAHNZ:  
 24 Q All right. It says that -- that 90 percent of  
 25 people that have been on long-term use of

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1 **that they would do well, if they were going to**  
 2 **use benzodiazepines in their practice, to**  
 3 **follow these clinical guidelines about their**  
 4 **safe use.**  
 5 Q All right. And you point them to a file within  
 6 the jpshealthnet.org, right?  
 7 **A Yes. Simply as an example of one clinical**  
 8 **practice guideline.**  
 9 Q All right. And that's one that you believe is  
 10 appropriate for physicians to use, correct?  
 11 **A Yes. I believe I have snip-its from it further**  
 12 **over in the presentation.**  
 13 (Exhibit No. 208 was marked.)  
 14 BY MR. GAHNZ:  
 15 Q All right. I'm going to show you what we've  
 16 marked as Exhibit No. 208. And I'm going to  
 17 ask you is this the document that you referred  
 18 treating physicians to?  
 19 **A I don't recognize this as the exact document or**  
 20 **certainly not in this format.**  
 21 **You can tell if it's the same**  
 22 **document, because these are snips from it. So**  
 23 **if we find that snip, it will be the same**  
 24 **document, but I don't --**  
 25 Q Why don't you look at the bottom, all right?

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1 benzodiazepine experience withdrawal symptoms  
 2 whether withdrawn slowly or rapidly; is that  
 3 correct?  
 4 **A That is correct.**  
 5 Q What is the percentage for people that have not  
 6 been on benzodiazepines long term?  
 7 **A I don't -- I don't know it, but general term it**  
 8 **would depend on the specific length of time and**  
 9 **the specific dosing.**  
 10 **This is just discussing long-term**  
 11 **use greater than eight to twelve months.**  
 12 Q Okay. All right. So if you go to Ways I Could  
 13 Impact My Practice.  
 14 **A That's further back in the presentation, I**  
 15 **believe?**  
 16 Q Yeah. It's about ten pages from the end.  
 17 **A Okay. I'm there.**  
 18 Q All right. So what is the purpose of this  
 19 slide? What are you telling practitioners?  
 20 **A That there are clinical practice guidelines.**  
 21 **This is one example of them, but there are**  
 22 **clinical practice guidelines and that -- this**  
 23 **audience was a primary -- is a primary care**  
 24 **audience. So, in other words, that was the**  
 25 **main people that were the audience of this, and**

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1 Do you see where it says www.jpshealthnet.org.?  
 2 **A I do.**  
 3 Q Slash sites?  
 4 **A Right.**  
 5 Q Slash default?  
 6 **A I see that.**  
 7 Q Slash files, slash prescribe -- I want you to  
 8 compare Exhibit 208 to what is on the bottom --  
 9 what is on your Ways I Could Impact My Practice  
 10 slide.  
 11 **A Okay.**  
 12 Q Okay. Take a look at them, and then tell me if  
 13 this is the document that you referred the  
 14 physicians to go look at.  
 15 **A Well, this is cut off. On the bottom of mine**  
 16 **they're cut off. In addition to that, just**  
 17 **because it's from the same site -- I don't know**  
 18 **how often JPS does or does not update. So, in**  
 19 **other words, I -- you only asked me was this**  
 20 **the exact one I downloaded and referred people**  
 21 **to, and I don't know whether it is or not. It**  
 22 **looks generally familiar, I just don't know**  
 23 **it's exactly the same one.**  
 24 Q Okay. Well, the title of this is "E-Resource  
 25 October 2014." Is that the same title that's

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1 on your slide?

2 **A It appears to be.**

3 **Q** And the title is called "Prescribing and

4 Tapering Benzodiazepines." Correct?

5 **A It appears to be.**

6 **Q** And it's from the jpshealthnet.org., correct?

7 **A It appears to be.**

8 **Q** I guess I'm confused by -- why we're having a

9 problem with you authenticating this document.

10 Is there some -- is there something that I can

11 do to convince you that this is, in fact, the

12 document that you sent the doctors to in your

13 PowerPoint presentation?

14 MS. SCHNEIDER: Object to the form.

15 MR. SALEMI: Yeah, I object. He's

16 not required to authenticate the document. All

17 he's required to do is testify to what he

18 knows. You can answer.

19 **THE WITNESS: So before I did this**

20 **presentation, I went to this website, and I'm**

21 **quite sure at the time I printed it off. I**

22 **don't recall it looking in this exact format is**

23 **what I'm telling you. I'm not saying if it is**

24 **or is not the same exact information. I don't**

25 **recall it looking in this same format. I**

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1 **trying to be argumentative, I promise you. Do**

2 **you see at the top long-term discontinuation**

3 **use letter? On my slide. On my slide right**

4 **here.**

5 **Q** Yes.

6 **A** Do you see how it's underlined?

7 **Q** Yes.

8 **A** Okay. Do you see how it's not underlined over

9 there. So it's not a capture of the same exact

10 document. And this is -- this is a capture of

11 a document. It might be the same information.

12 I'm just saying this -- this document right

13 here is not the same document, because the one

14 I -- the one I snipped from has an underline

15 under that.

16 **Q** All right.

17 **A** So I don't know if it's all the same

18 information or it's not. I just don't know one

19 way or the other.

20 **Q** All right.

21 **A** And -- well, that's all I can -- that's the

22 best I can answer you.

23 **Q** All right. So let's look at 208.

24 **A** Okay. That's this document right here.

25 **Q** In the first paragraph it provides "There are

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1 **didn't go to WebCash. I went directly to a**

2 **website. I don't know if this is the exact**

3 **information or not.**

4 **You can tell the information from**

5 **what I printed because I used -- if you will go**

6 **to the next few pages, there are snip-its or**

7 **these are -- I'm sorry, I don't -- I'm blanking**

8 **on the word. Captures. Is that what you call**

9 **it? Capture from the document. These are**

10 **captures from this document. So if you find**

11 **that exact capture in here, then it's probably**

12 **the same document. Do you see this page right**

13 **here? It's a capture. So I just don't know.**

14 **Q** All right. So go --

15 **A** It may well be.

16 **Q** Let's go a couple pages in.

17 **A** Okay.

18 **Q** So you have a long-term use discontinuation

19 letter.

20 **A** That's correct.

21 **Q** All right. And there is a long-term use

22 discontinuation letter contained within the --

23 at 11 of 13 of Exhibit 208, correct?

24 **A** Let's go look at it. Yes.

25 **And so as an example -- I'm not**

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1 just as many risks involved with abrupt

2 withdrawal of benzodiazepines as there are for

3 using them for long-term use."

4 Would you agree with that statement?

5 **A** I would.

6 **Q** Then on the right side on that same page

7 there's a number of bullet points that talk

8 about tapering benzodiazepines; is that

9 correct?

10 **A** That's correct.

11 **Q** All right. And the first bullet point says

12 that "You should attempt to decrease frequency

13 and dosage for long-term users versus

14 discontinuation." Correct?

15 **A** That is what it says.

16 **Q** And you would agree with that?

17 **A** Well, in a primary care setting, yes.

18 **Q** In what settings would you disagree with that?

19 **A** In a jail setting -- in a jail setting in a

20 person who had not been using a high dose for a

21 long period of time I would disagree with that.

22 **Q** So in every other circumstance you would agree

23 with it, or are there other circumstances that

24 you would disagree with it as well?

25 **A** There might well be other times I would

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1 **disagree with it as well.**  
 2 Q But sitting here today, the only example that  
 3 you can think of is that somebody that hasn't  
 4 been on benzodiazepines long term and is in  
 5 jail?  
 6 A **So another -- so another scenario in which I**  
 7 **would recommend discontinuation is -- versus,**  
 8 **you know, that I would recommend getting a**  
 9 **person off of it is people with a history of**  
 10 **substance use. You've come to -- you know, you**  
 11 **have substance use, you're in my facility, then**  
 12 **I would -- I would get you off of them. I**  
 13 **wouldn't -- I would not just decrease the**  
 14 **frequency and the dosage in a person who had**  
 15 **had a suicide attempt with benzodiazepines.**  
 16 MR. GAHNZ: I'm sorry, what was the  
 17 last part of that answer?  
 18 (Last part of answer read.)  
 19 BY MR. GAHNZ:  
 20 Q In that circumstance would you take any  
 21 precautions with that patient?  
 22 A **Yes.**  
 23 MS. SCHNEIDER: I'm just going to  
 24 object as vague and overly broad. Go ahead.  
 25 **THE WITNESS: Depending on the**

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1 MS. SCHNEIDER: Join.  
 2 BY MR. GAHNZ:  
 3 Q Would you expect that a person being abruptly  
 4 taken off of a benzodiazepine would have  
 5 increased anxiety?  
 6 MR. SALEMI: Same objections.  
 7 MS. SCHNEIDER: Join.  
 8 **THE WITNESS: You did a thing, so I**  
 9 **would expect both of them to have increased**  
 10 **anxiety, not necessarily more in the second**  
 11 **scenario.**  
 12 BY MR. GAHNZ:  
 13 Q Okay. So the mere fact of being taken off of  
 14 benzodiazepine either gradually or abruptly is  
 15 going to increase a person's anxiety?  
 16 MR. SALEMI: Same objections.  
 17 MS. SCHNEIDER: Join.  
 18 **THE WITNESS: No. You rephrased the**  
 19 **second one doing that would have a causation.**  
 20 **The first way you asked me was would I expect a**  
 21 **person who had been tapered off or was being**  
 22 **tapered off to have increased anxiety. So**  
 23 **those are two different questions, a matter of**  
 24 **causation.**  
 25

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1 **circumstances, I might well taper that**  
 2 **benzodiazepine off and/or monitor them for**  
 3 **signs of benzodiazepine withdrawal.**  
 4 BY MR. GAHNZ:  
 5 Q Okay. In this case there was no tapering,  
 6 correct, in Ms. Freiwald's case?  
 7 A **That is correct.**  
 8 Q It also states that you should expect anxiety,  
 9 insomnia, and resistance. Do you agree with  
 10 that statement?  
 11 MR. SALEMI: I'll object to the  
 12 form. Presents an incomplete hypothetical.  
 13 It's irrelevant to the facts of the case. You  
 14 can answer.  
 15 MS. SCHNEIDER: Join.  
 16 **THE WITNESS: I agree that that is**  
 17 **contained in this bullet point, yes.**  
 18 BY MR. GAHNZ:  
 19 Q Okay. And would you expect that anxiety --  
 20 well, let me rephrase. Let me back up.  
 21 Would you expect that a patient  
 22 being tapered off of benzodiazepine slowly  
 23 would have increased anxiety?  
 24 A **Yes.**  
 25 MR. SALEMI: Same objections.

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1 BY MR. GAHNZ:  
 2 Q Well, let me back up and see if I can ask the  
 3 question.  
 4 Does being tapered off of a  
 5 benzodiazepine increase a person's anxiety?  
 6 MR. SALEMI: Same objections.  
 7 MS. SCHNEIDER: Join.  
 8 **THE WITNESS: It's not designed to,**  
 9 **but I would expect the person to have increased**  
 10 **anxiety. So tapering is not designed to**  
 11 **increase anxiety or it's the not the purpose of**  
 12 **it, but people who are -- who are getting off**  
 13 **benzodiazepines, whether being tapered or**  
 14 **whether being withdrawn -- whether it's stopped**  
 15 **suddenly, are going to have increased anxiety,**  
 16 **just like people in jail are going to have**  
 17 **increased anxiety. So those are --**  
 18 BY MR. GAHNZ:  
 19 Q So would you expect that a person who is taken  
 20 off of a benzodiazepine abrupt- -- well, let me  
 21 rephrase the question.  
 22 Does being taken off of a  
 23 benzodiazepine abruptly increase a person's  
 24 anxiety?  
 25 MR. SALEMI: Same objections.

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1 MS. SCHNEIDER: Same objection --

2 join.

3 **THE WITNESS: Well, anxiety can be**

4 **one of the benzodiazepine withdrawal symptoms,**

5 **so it would depend on the dose and the length**

6 **of time the person had been on whether one**

7 **would expect it. Given a high enough dose and**

8 **a long enough term, yes, one would expect it.**

9 **Given a low enough dose and a low -- a short**

10 **enough term one would not expect it.**

11 BY MR. GAHNZ:

12 Q Okay. And Ms. Freiwald, is it your opinion

13 that her anxiety increased because of being

14 taken off of it abruptly by Dr. Fatoki?

15 A **It is my opinion that that is not the case.**

16 Q All right. So her anxiety -- do you have an

17 opinion as to whether Ms. Freiwald's anxiety

18 increased while she was in jail?

19 A **I would use the term that her emotional**

20 **disregulation continued to have problems. She**

21 **had problems with emotional disregulation that**

22 **is experienced by the person as anxiety. So,**

23 **yes, I agree that she felt more anxious while**

24 **she was in jail most specifically related to**

25 **her not getting out like she thought she was**

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1 or no question, and that's why I'm really

2 struggling here.

3 Is this a -- is this a question that

4 you can answer yes or no?

5 A **I don't --**

6 MR. SALEMI: I'm sorry, could you

7 read it again, please, the question and the

8 answer as well?

9 (Last question and answer read.)

10 MR. SALEMI: Thank you. Is there a

11 question pending? Did I cut one off or --

12 MR. GAHNZ: You did.

13 MR. SALEMI: Okay. Do you want her

14 to repeat that and then I can state my

15 objections?

16 MR. GAHNZ: Yes, please.

17 MR. SALEMI: Would you?

18 (Last question read.)

19 MR. SALEMI: I think there's more to

20 it.

21 MS. SCHNEIDER: I'm going to object

22 as asked and answered, but go ahead.

23 MR. SALEMI: Well, wait a sec

24 though.

25 (Requested portion read.)

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1 **going to after one night.**

2 Q So in your opinion, is there any relation to

3 Ms. Freiwald's increased anxiety and the

4 cessation of the clonazepam?

5 MS. SCHNEIDER: Object to the form.

6 **THE WITNESS: It is much more likely**

7 **to be related to her circumstances and not**

8 **getting out than -- than it is to withdrawal --**

9 **withdrawal from benzodiazepines.**

10 BY MR. GAHNZ:

11 Q And I'll move to strike as nonresponsive.

12 My question was, is it your opinion

13 that the abrupt cessation of clonazepam had no

14 role in Ms. Freiwald's increased anxiety?

15 MS. SCHNEIDER: Object to the form.

16 **THE WITNESS: Well, my answer --**

17 **you -- I mean, it's responsive or it's not**

18 **responsive. It was -- her increased anxiety**

19 **and increased emotional disregulation were much**

20 **more likely related to her underlying**

21 **psychiatric condition and her being in jail and**

22 **not getting out than due to any benzodiazepine**

23 **withdrawal.**

24 BY MR. GAHNZ:

25 Q I understand that answer. My question is a yes

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1 MR. SALEMI: Thank you.

2 So we're back on the record. I have

3 an objection. Go ahead if you can.

4 MS. SCHNEIDER: My objection is it's

5 asked and answered and he's explained it, but

6 go ahead.

7 MR. SALEMI: I agree. And I object

8 to the form, and I object to directing the

9 witness to answer the question yes or no. I

10 don't believe that the answer has to be in the

11 form of yes or no. I believe the answer was

12 reasonable, and it's been asked and answered.

13 So those are my objections, but go

14 ahead.

15 BY MR. GAHNZ:

16 Q Just so the record is clear, I move to strike

17 that last answer as nonresponsive and ask the

18 doctor are you able to answer that question yes

19 or no?

20 MS. SCHNEIDER: Same objections.

21 **THE WITNESS: I've given you the**

22 **best answer that I can.**

23 BY MR. GAHNZ:

24 Q Okay. Same question with respect to

25 gabapentin. Is it your opinion that



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1 Ms. Freiwald's increased anxiety was in no way  
2 related to the sudden cessation of gabapentin?  
3 **A That is correct. That is my opinion.**  
4 Q Okay. Going back to Exhibit 208. Are you with  
5 me?  
6 **A I am.**  
7 Q All right. One of the bullet points a little  
8 bit farther down says, "The use of gabapentin  
9 can be helpful in speeding up the tapering  
10 process." Correct?  
11 **A That is what that bullet point says.**  
12 Q You would agree with that?  
13 **A I would not.**  
14 MR. SALEMI: And show an objection,  
15 again, to form and foundation. It presents an  
16 incomplete hypothetical. There's no context to  
17 equating what's in Exhibit No. 207 to the  
18 length of time taking and the dosage of  
19 benzodiazepine which the deceased was on --  
20 MR. GAHNZ: Counsel, at this --  
21 MR. SALEMI: -- that the deceased  
22 was on in this case.  
23 MS. SCHNEIDER: Join.  
24 MR. SALEMI: And I would like to  
25 show a continuing, but I just don't --

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1 is wrong and my objection will be preserved,  
2 I'm fine with that.  
3 MS. SCHNEIDER: I'm going to join in  
4 the objection.  
5 BY MR. GAHNZ:  
6 Q One of the things that --  
7 I'm sorry, is everybody done?  
8 MS. SCHNEIDER: Um-hmm.  
9 BY MR. GAHNZ:  
10 Q It indicates in this document that abrupt  
11 withdrawal is not recommended. Would you agree  
12 with that?  
13 **A Would you point to that?**  
14 Q Sure. It's the second-to-last bullet point on  
15 the first page of Exhibit 208.  
16 MS. SCHNEIDER: I'm just going to  
17 object to the form, vague and overly broad, but  
18 go ahead.  
19 **THE WITNESS: Well, this document**  
20 **speaks for itself, and I believe you did read**  
21 **that language correctly.**  
22 **Do I agree with every clinical**  
23 **statement of this practice guideline, no. And**  
24 **abrupt withdrawal is not recommended in**  
25 **cases -- I would add additional language in**

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1 MR. GAHNZ: Your objection is to the  
2 form of the question. The editorialing is  
3 starting to be problematic to the point of  
4 going to the judge. Coaching the witness on  
5 the record is never acceptable. If you have an  
6 objection to the form of the question, that's  
7 fine. You realize, of course, that all of  
8 your -- all of your objections are preserved  
9 regardless of whether this is a video  
10 deposition or not. So I will ask you very  
11 nicely to please stop coaching the witness.  
12 MR. SALEMI: And I'll indicate for  
13 the record that in no way am I coaching the  
14 witness. Your characterization is either  
15 mis- -- either willfully or unintentionally  
16 misinformed. My objections are absolutely  
17 appropriate. And my objection in regard to the  
18 use of this document in this hypothetical is  
19 exactly the type of form objection that I'm  
20 obligated to make in order to make sure I  
21 preserve the issue. If you don't want me to  
22 detail my objections to form, I guess I could  
23 just make an objection to form if you'll agree  
24 that you're not going to require any statement  
25 from me in regard to how in form your question

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1 **cases in which long-term use and high doses**  
2 **have been provided.**  
3 **And it goes on to say there's a risk**  
4 **of seizures and/or delirium that increases with**  
5 **abrupt withdrawal. Those did not occur in this**  
6 **case.**  
7 BY MR. GAHNZ:  
8 Q All right. At page 23.  
9 **A Of what document, please?**  
10 Q Your report. I'm sorry. Are you ready?  
11 **A I am.**  
12 Q Under A, 19(A), you write that "Ms. Freiwald  
13 failed to bring her medication with her when  
14 she self surrendered. Had she done so, her  
15 medications would have more likely than not  
16 been available to her prior to the weekend."  
17 What is your basis for that?  
18 **A My basis for that is that inmates which are**  
19 **reporting -- who are reporting to the Huber**  
20 **center were instructed to bring their**  
21 **prescription medications with them when they**  
22 **reported to the main Brown County Jail. Had**  
23 **she done so, usual custom and practice would**  
24 **have been to verify and continue or discontinue**  
25 **those medicines at that time, and she would**

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1 have had them from that night.  
 2 The problem was she went to another  
 3 facility, so she and the medicines were at two  
 4 different facilities. They had to be verified  
 5 and then couriered, and a weekend intervened.  
 6 So had those -- had she brought them with her,  
 7 she likely would have had them by at the very  
 8 least the next day, which would have been  
 9 Friday.  
 10 Q And is there -- when on Friday would she have  
 11 had them?  
 12 A I have no idea.  
 13 Q Okay. What time did she check into the jail on  
 14 Thursday?  
 15 A 7:41 p.m.  
 16 Q Okay. And so how would the medications have  
 17 gotten from the jail to the work release center  
 18 between 7:41 p.m. and the next morning?  
 19 A So I'm -- number one, I don't have any specific  
 20 information. I can tell you the usual and  
 21 customary practice at a jail like the Brown  
 22 County Jail would be that her medications were  
 23 reviewed and approved or disapproved that night  
 24 and sent with her. She took her -- all her  
 25 possessions with her. She was transported by

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1 clonazepam, correct?  
 2 A Correct.  
 3 Q And you're critical of that list in that  
 4 they're mostly nonspecific and can be found in  
 5 a number of other conditions including anxiety?  
 6 A I don't know if I would characterize it as  
 7 critical of that list. I make the comment that  
 8 it's not specific, and I disagree that those  
 9 are -- to the extent that Dr. Greist opined  
 10 that those symptoms were specific to  
 11 benzodiazepine withdrawal, I disagree. They  
 12 are not.  
 13 And by the way, I would like a  
 14 restroom break at some point.  
 15 MR. GAHNZ: All right. Why don't we  
 16 take that now.  
 17 THE WITNESS: Okay.  
 18 THE VIDEOGRAPHER: We are off the  
 19 record at 2:08 p.m. This is the end of disc  
 20 number three in the deposition of Dr. Thomas  
 21 Fowlkes.  
 22 (Recess taken, 2:08 p.m. to 2:18 p.m.)  
 23 THE VIDEOGRAPHER: We are back on  
 24 the record at 2:18 p.m. This is the beginning  
 25 of disc number four in the deposition of

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1 the friend who brought her. And they likely  
 2 would have gone with her. Or might have been  
 3 made up -- I believe the nurses at the Brown  
 4 County Jail put those onto a -- a card, for  
 5 lack of a better term, the punch-out card, and  
 6 made an MAR. So they might have been sent the  
 7 next day.  
 8 But in any event, they either would  
 9 have been sent with her that night or sent the  
 10 next day.  
 11 Q Okay. Turn to page 30 of your report, please.  
 12 Are you with me there?  
 13 A I am.  
 14 Q All right. You are at that point commenting on  
 15 Dr. Greist's opinions, correct?  
 16 A In the top of this page, yes. In the bottom  
 17 it's Nurse Ward.  
 18 Q Right. D. We're at page 30, subsection D, as  
 19 in David.  
 20 A Yes. I'm going to verify that it is  
 21 Dr. Greist. I believe it is. Yes, that is  
 22 correct.  
 23 Q Okay. And one of the things that you're  
 24 commenting on is the list of symptoms that  
 25 Dr. Greist attributes to discontinuation of

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1 Dr. Thomas Fowlkes.  
 2 BY MR. GAHNZ:  
 3 Q Are you ready?  
 4 A I am.  
 5 Q All right. This morning we were talking about  
 6 cases where you've testified, and one of the  
 7 questions that I asked you was whether you had  
 8 testified about anything related to  
 9 benzodiazepine withdrawal. And I believe your  
 10 statement was no, that you had not.  
 11 Do you remember that testimony?  
 12 A Or at least that it wasn't a central issue.  
 13 Q Wasn't a central issue. Okay.  
 14 A That I -- and I probably -- I think -- I should  
 15 have, if I didn't, qualified to say to the best  
 16 my recollection.  
 17 Q Okay. Fair enough.  
 18 Do you remember that you were named  
 19 as an expert witness on behalf of the Estate of  
 20 Cynthia Mixon? That's one of the -- that's one  
 21 of the cases that's listed on your --  
 22 A Yes, I do recall that.  
 23 Q Okay. And do you recall that you provided a  
 24 report in that case?  
 25 A I do.

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1 Q You provided a deposition in that case?

2 A **I did.**

3 Q And you also provided an affidavit in support

4 of the -- or you provided an affidavit in that

5 case, right?

6 A **I can't -- I can't agree or disagree to that.**

7 **I -- I mean, if you say I did, you probably**

8 **have it and I probably did, but I don't recall**

9 **that at this moment.**

10 Q You have been down this road before. All

11 right. So let's turn --

12 A **I --**

13 Q I'm sorry.

14 A **I should say and it was my recollection that**

15 **Ms. Mixon -- I was retained on behalf of the**

16 **plaintiff in that case. Ms. Mixon died of**

17 **withdrawal in the jail, and it was my**

18 **recollection that the primary drug was**

19 **heroin -- or, I'm sorry, opiates of some kind.**

20 **That is my recollection of that case.**

21 Q Okay. At page 20 -- page 30. Maria is going

22 to kill me if I go back ten pages.

23 On page 30 of your report,

24 subsection D, you talk about the clinically

25 significant symptoms of benzodiazepine

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1 Q All right. And this was something that you

2 presented to the Court in support of your

3 opinions in Ms. Mixon's case, correct?

4 A **Generally, that is correct. I don't recall**

5 **what the specific purpose of this affidavit is.**

6 **I mean, in other words, that's not my -- I**

7 **didn't -- I don't know what it was in support**

8 **of specifically. In support of something, a**

9 **motion or something.**

10 Q Fair enough.

11 But in any event, this is sworn

12 testimony that you gave in Ms. Mixon's case?

13 A **That is correct.**

14 Q All right. And your testimony was that

15 Ms. Mixon died of withdrawal, specifically

16 benzodiazepine and/or opiate withdrawal in

17 paragraph 3, correct?

18 A **That is the case.**

19 Q Okay. So when you said that you hadn't

20 testified with respect to the effects of

21 benzodiazepine withdrawal, that was inaccurate?

22 MS. SCHNEIDER: Object to the form.

23 I think that misstates his testimony. But go

24 ahead.

25 **THE WITNESS: So it was my testimony**

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1 withdrawal, correct?

2 A **That's correct.**

3 Q And those are hallucinations, delirium,

4 seizures, and autonomic hyperactivity, correct?

5 A **Correct.**

6 Q What is autonomic hyperactivity?

7 A **In simple terms or to explain it as succinctly**

8 **as I can, that would be a catecholamine-like**

9 **reaction, fight or flight reaction. You may**

10 **have heard of that. So increased blood**

11 **pressure, increased heart rate, sweating,**

12 **potentially increased temperature. So, in**

13 **other words, over- -- overreaction of**

14 **catecholamines.**

15 (Exhibit No. 209 was marked.)

16 BY MR. GAHNZ:

17 Q All right. Doctor, I'm showing you what we've

18 marked as Exhibit 209. And this is an

19 affidavit of Dr. Thomas Fowlkes, correct?

20 A **It appears to be so.**

21 Q And if you turn to page 9 of that affidavit,

22 you swore under oath on January 24, 2019,

23 correct?

24 A **I'm looking for a date. January. Yes, that is**

25 **correct.**

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1 **previously and it remains my testimony**

2 **previously that I didn't think that that was a**

3 **central issue. Many of my cases involve**

4 **withdrawal from substances. Most of them are**

5 **opiate withdrawal. And it was my recollection**

6 **that this -- this was primarily related to**

7 **opiate withdrawal.**

8 **As your -- as my memory is now being**

9 **refreshed, she had a seizure, and seizures are**

10 **not usually caused by opiate withdrawal. So my**

11 **opinion was that because her death was due to a**

12 **seizure, it was more likely related to the**

13 **benzo withdrawal than opiate withdrawal.**

14 Q And that was a central issue in the case was

15 how did she die, right?

16 MS. SCHNEIDER: Object to the form.

17 **THE WITNESS: Yes, how -- the cause**

18 **of her death was a central issue in this case.**

19 MS. SCHNEIDER: What exhibit number

20 was that again? 209.

21 BY MR. GAHNZ:

22 Q At page 4 under C you wrote, "I developed the

23 opinion that Ms. Mixon was suffering from

24 benzodiazepine and opiate withdrawal because

25 those disorders follow a predictable course."

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1 Correct?

2 **A Correct.**

3 Q And since we're only dealing with

4 benzodiazepines, we won't talk about opiates.

5 But if you go to page 5 --

6 **A Okay.**

7 Q -- under No. 2 it provides "Benzodiazepine

8 withdrawal develops within a few days of

9 stopping benzodiazepines. The most prominent

10 symptom of benzodiazepine withdrawal is rebound

11 anxiety." Correct? You wrote that?

12 **A You've read it correctly so far.**

13 Q On page 30 of your report -- have you got that

14 handy?

15 **A I do.**

16 Q -- do you list rebound anxiety as one of the

17 clinically significant symptoms of

18 benzodiazepine withdrawal?

19 **A On page -- on page 30 you said? I was**

20 **commenting on Dr. Greist's list of symptoms. I**

21 **wasn't creating a list of symptoms.**

22 Q Did you write "The clinically significant

23 symptoms of benzodiazepine withdrawal are

24 hallucinations, delirium, seizures, and

25 autonomic hyperactivity"?

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1 benzodiazepine withdrawal, correct?

2 **A I listed it as a most prominent symptom, not a**

3 **clinically significant symptom. This other**

4 **sentence has clinically significant symptoms.**

5 Q Did you list rebound anxiety as a symptom of

6 benzodiazepine withdrawal anywhere in your

7 50-odd pages of report for the defendants in

8 this case?

9 **A Well, in the -- in the sentence just before**

10 **that I said, "The symptoms are mostly**

11 **nonspecific and can be found in a number of**

12 **conditions including anxiety."**

13 **And I believe if I turn to Dr.-- let**

14 **me turn to Dr. Greist's report and see**

15 **whether -- I was commenting on his description**

16 **of symptoms. Let me see where it's listed.**

17 **Page 20 of his report. Yes, he lists anxiety.**

18 **It doesn't use the specific word "rebound" in**

19 **there. I believe the word -- the word**

20 **"rebound" I don't believe is in that paragraph.**

21 **I don't know whether it's anywhere within my**

22 **report; you would have to do a word search to**

23 **see that. It is in the presentation that you**

24 **provided.**

25 Q All right. And under Roman numeral III on that

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1 **A So those are two different statements though.**

2 **This says the most prominent, and this**

3 **statement on page 30 says the clinically**

4 **significant.**

5 **So rebound anxiety is not usually**

6 **clinically significant. The clinically**

7 **significant ones are when one has**

8 **hallucinations, delirium, seizures, and**

9 **autonomic hyperactivity.**

10 **Those statements are not**

11 **inconsistent at all.**

12 Q So when you're testifying for the plaintiff,

13 you listed rebound anxiety as a symptom of

14 rebound anxiety -- or of benzodiazepine

15 withdrawal, correct?

16 **A Well, you didn't read the whole paragraph. You**

17 **didn't read the last sentence of that**

18 **paragraph.**

19 Q "When death occurs in the setting of

20 benzodiazepine withdrawal, it is most often

21 secondary to seizures."

22 **A Yes.**

23 Q Okay. So my question is, when you were

24 testifying on behalf of the plaintiff, you

25 listed rebound anxiety as a symptom of

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1 same page --

2 **A Now we're on Exhibit 209 or my report?**

3 Q We're back on your affidavit.

4 **A Oh, my affidavit. Okay. Which number or which**

5 **page?**

6 Q Page 5, Roman numeral III or I-I-I.

7 **A Okay.**

8 Q You indicate that "the symptoms of

9 benzodiazepine withdrawal are summarized in the

10 Clinical Institute Withdrawal Assessment -

11 Benzodiazepine CIWA-B." Correct?

12 **A Correct.**

13 Q And that is a document that we showed you as

14 Exhibit 206 in your exhibit earlier, correct?

15 **A Correct.**

16 Q All right. And your testimony I believe was

17 that you don't rely on the CIWA scale in your

18 practice.

19 **A That was not my testimony. My testimony was**

20 **that I do not use the CIWA-B assessment scale.**

21 **So I use the CIWA scale regularly. I don't use**

22 **the CIWA-B, because it has mostly nonspecific**

23 **symptoms and it doesn't predict clinical**

24 **severity.**

25 Q But you asked the Court to rely on the CIWA-B



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1 scale as stating the signs and symptoms of  
 2 benzodiazepine withdrawal in your sworn  
 3 testimony when you were testifying on behalf of  
 4 the plaintiff.  
 5 MS. SCHNEIDER: Object to the form.  
 6 **THE WITNESS: The sentence speaks**  
 7 **for itself. I said the symptoms are summarized**  
 8 **in that -- in that document, yes.**  
 9 BY MR. GAHNZ:  
 10 Q Okay.  
 11 **A And went on to say I was familiar with them**  
 12 **and...**  
 13 Q Now, going back to your report at page 30 you  
 14 indicate that the -- again, "The clinically  
 15 significant symptoms of benzodiazepine  
 16 withdrawal are hallucinations."  
 17 Is that contained anywhere in the  
 18 sworn testimony that you gave on behalf of the  
 19 plaintiff?  
 20 **A You mean in the Nixon case?**  
 21 Q Yes.  
 22 **A Well, that wasn't -- that wasn't an issue in**  
 23 **that case. As I recall, Ms. Nixon died**  
 24 **suddenly due to a seizure. And she was not**  
 25 **having hallucinations or delirium. That was**

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1 BY MR. GAHNZ:  
 2 Q Do you have the question in mind, Doctor?  
 3 **A I do.**  
 4 **So after refreshing my memory of**  
 5 **this affidavit, Ms. Nixon was not suffering**  
 6 **from hallucinations, and it was not something**  
 7 **that was included in my affidavit.**  
 8 Q Do you list delirium as a significant symptom  
 9 of benzodiazepine withdrawal in your affidavit  
 10 to the Court?  
 11 **A Ms. Nixon was not suffering from delirium, and**  
 12 **it was not something that was included in my**  
 13 **report.**  
 14 Q Do you list autonomic hyperactivity in your  
 15 affidavit to the Court?  
 16 **A I believe I did discuss that. I don't know if**  
 17 **that exact terminology or some other synonym**  
 18 **was described, but yes.**  
 19 Q Okay. At page 7 of your affidavit. Are you  
 20 there?  
 21 **A I am.**  
 22 Q About midway through paragraph 6 you write, "In  
 23 addition to classic signs of benzodiazepine  
 24 withdrawal including headache; fatigue; loss of  
 25 appetite; flushing or feeling of burning in the

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1 **not part of her -- she was -- my recollection**  
 2 **of Ms. Nixon's case is that she was suffering**  
 3 **from opiate withdrawal, so that was what her**  
 4 **symptoms were, and that she suddenly died of a**  
 5 **seizure. And because it was a seizure, it was**  
 6 **not likely related to the opiate withdrawal,**  
 7 **but may well have been related to**  
 8 **benzodiazepine withdrawal which she had also**  
 9 **been taking prior to coming to jail.**  
 10 Q Do you tell the Court in Exhibit 209 that a  
 11 clinically significant symptom of  
 12 benzodiazepine withdrawal is hallucination?  
 13 MS. SCHNEIDER: Asked and answered.  
 14 **THE WITNESS: Do I tell -- so number**  
 15 **one, I would have to read this document to see**  
 16 **exactly what I told the Court in this case.**  
 17 BY MR. GAHNZ:  
 18 Q Go ahead.  
 19 **A Okay.**  
 20 Q Why don't we go off the record.  
 21 THE VIDEOGRAPHER: We are off the  
 22 record at 2:31 p.m.  
 23 (Pause in proceedings.)  
 24 THE VIDEOGRAPHER: We are back on  
 25 the record at 2:33 p.m.

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1 face, hands, or feet; and anxiety (such as a  
 2 description that one's heart was about to  
 3 bust), these are well known withdrawal  
 4 symptoms."  
 5 Did I read that correctly, first of  
 6 all?  
 7 **A You did.**  
 8 Q Okay. Do any of those classic signs of  
 9 benzodiazepine withdrawal appear in your report  
 10 for the defendants in this case as part of  
 11 your -- not somebody else saying it, but did  
 12 you list those as classic signs of  
 13 benzodiazepine withdrawal?  
 14 **A As classic signs or just --**  
 15 Q Or at all.  
 16 **A Just a minute.**  
 17 **So what I say in my report --**  
 18 Q Which page and paragraph are you referring to,  
 19 sir?  
 20 **A I'm on No. 20, opinions 11 and 12. And then on**  
 21 **23, No. 17. On page 23, No. 17, "It's my**  
 22 **opinion that Ms. Freiwald was not suffering**  
 23 **from clinically significant withdrawal**  
 24 **symptoms."**  
 25 Q Okay. Do you -- other than at page 30, do you

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1 list what you think the clinically significant  
2 signs of benzodiazepine withdrawal are?  
3 **A Well, I try not to be redundant. I mean, I**  
4 **listed them at page 30. The clinically**  
5 **significant signs of benzodiazepine withdrawal**  
6 **are delirium and seizures.**  
7 Q Do you list -- do you inform us as the  
8 plaintiffs' counsel that you believe that the  
9 classic signs of benzodiazepine withdrawal  
10 include headache? Did you tell the plaintiffs  
11 that in your report on behalf of the defendants  
12 in this case?  
13 **A Not --**  
14 MS. SCHNEIDER: Well, I'm just going  
15 to object. I think there's two questions out  
16 there. But do you understand what he's asking?  
17 **THE WITNESS: Yes.**  
18 BY MR. GAHNZ:  
19 Q I'll start over.  
20 Anywhere in your report that you did  
21 on behalf of the defendants in Ms. Freiwald's  
22 case --  
23 **A So we're talking about this present case, not**  
24 **this affidavit anymore? In this present case?**  
25 Q Yeah.

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1 **number of things. They are consistent with**  
2 **benzodiazepine withdrawal; they're also**  
3 **consistent with anxiety, emotional**  
4 **disregulation, and a number of other things.**  
5 **So she did not have classic**  
6 **benzodiazepine withdrawal symptoms.**  
7 Q And I'll move to strike as nonresponsive.  
8 Did you inform the reader of your  
9 report in the Freiwald case that a classic sign  
10 of benzodiazepine withdrawal is fatigue?  
11 MS. SCHNEIDER: Asked and answered.  
12 **THE WITNESS: I've already provided**  
13 **you my answer to that. Would you like me to**  
14 **say it again?**  
15 BY MR. GAHNZ:  
16 Q Yes, please.  
17 **A I don't believe it's in my report.**  
18 Q Okay. Thank you.  
19 Did you tell the reader of your  
20 report in the Freiwald case that loss of  
21 appetite was a classic sign of benzodiazepine  
22 withdrawal?  
23 **A I don't believe it -- I don't believe I did,**  
24 **and I don't believe it's clinically relevant in**  
25 **this case.**

1 **A Okay.**  
2 Q -- do you inform the reader that a classic sign  
3 of benzodiazepine withdrawal is headache?  
4 **A I don't believe it's in my report.**  
5 Q All right. Do you inform the reader that a  
6 classic sign of benzodiazepine withdrawal is  
7 fatigue?  
8 **A I don't believe it's -- I -- so that is amongst**  
9 **the symptoms. That is a very nonspecific**  
10 **symptom, and I believe it is misleading to say**  
11 **that it is amongst the classic signs.**  
12 Q So when you did the affidavit for the Court,  
13 were you misleading the Court?  
14 MS. SCHNEIDER: Object to the form.  
15 **THE WITNESS: These are two**  
16 **different patients with two different sets of**  
17 **symptoms. And Ms. Mixon was suffering from**  
18 **significant opiate withdrawal and then suddenly**  
19 **died of a seizure.**  
20 BY MR. GAHNZ:  
21 Q Okay.  
22 **A Which is different than Ms. Freiwald who never**  
23 **had any specific signs or symptoms of**  
24 **benzodiazepine withdrawal. She had nonspecific**  
25 **signs and symptoms which were consistent with a**

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1 Q Did you tell the reader of your report in this  
2 case that flushing or feeling of burning in the  
3 face, hands, or feet was a classic sign of  
4 benzodiazepine withdrawal?  
5 **A I don't recall that being a feature of this**  
6 **case or clinically significant in this case and**  
7 **not an important portion.**  
8 Q Regardless of whether it was relevant, did you  
9 include it in your report as a classic sign of  
10 benzodiazepine withdrawal?  
11 MS. SCHNEIDER: Asked and answered.  
12 **THE WITNESS: No. I try to -- I try**  
13 **to include only relevant symptoms.**  
14 BY MR. GAHNZ:  
15 Q Okay. So let's examine that for just a minute.  
16 At page 30 --  
17 **A Of my report?**  
18 Q Yep. -- you tell the reader that the  
19 clinically significant symptoms of  
20 benzodiazepine withdrawal are hallucinations.  
21 That's one of the things that you  
22 tell the reader?  
23 **A That is correct.**  
24 Q There was no hallucinations in this case,  
25 right?

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1 **A That is correct.**  
 2 Q Okay. But you included hallucinations when you  
 3 were an expert for the defendant but not when  
 4 you were an expert for the plaintiff, true?  
 5 **A No, not true.**  
 6 Q We've already discussed whether or not  
 7 hallucinations was contained in your affidavit  
 8 to the Court, and you said it was not, correct?  
 9 **A I don't believe that either Ms. Mixon or**  
 10 **Ms. Freiwald were suffering from**  
 11 **hallucinations. I don't believe that's**  
 12 **relevant to the -- what I -- what I am saying**  
 13 **in this sentence is I am telling you what are**  
 14 **the dangerous symptoms -- or the specific**  
 15 **symptoms of benzodiazepine withdrawal:**  
 16 **Hallucinations, which can be part of delirium;**  
 17 **seizures; and autonomic hyperactivity. We**  
 18 **don't have any evidence in this case that**  
 19 **Ms. Freiwald had any of those conditions.**  
 20 Q But you didn't tell us about all the classic  
 21 signs that we've just gone through in  
 22 paragraph 6 of your affidavit?  
 23 MS. SCHNEIDER: Asked and answered.  
 24 MR. SALEMI: Object to the form.  
 25 **THE WITNESS: I don't know how to --**

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1 **of -- I believe it was multiple different**  
 2 **categories of drugs, but specifically I know**  
 3 **she was on high doses of opiates, and she was**  
 4 **on high doses of benzodiazepines. And both of**  
 5 **them are dangerous if stopped abruptly. And,**  
 6 **in fact, it killed her in this case.**  
 7 Q The abrupt cessation of benzodiazepines killed  
 8 her?  
 9 **A The abrupt cessation of opiates caused her to**  
 10 **be very sick with opiate withdrawal, and then**  
 11 **she suddenly died of a seizure which was likely**  
 12 **related to benzodiazepine withdrawal. And she**  
 13 **had no medical treatment and died of a seizure.**  
 14 **I'm sorry, I should -- let me stop my answer.**  
 15 Q Paragraph 7 of your affidavit that you provided  
 16 when you were hired as a plaintiff's expert  
 17 provides, "A reasonable medical professional  
 18 who encountered Ms. Mixon at any point after  
 19 she began to exhibit symptoms on Wednesday  
 20 evening would have at a minimum treated the  
 21 withdrawal" -- "Ms. Mixon's withdrawal  
 22 symptoms. He/she would have given symptomatic  
 23 treatment for Ms. Mixon's vomiting and diarrhea  
 24 and would have ensured she was taking in  
 25 adequate fluids and would have begun a

1 **I don't know how to go about telling you any**  
 2 **more clearly.**  
 3 BY MR. GAHNZ:  
 4 Q All right. So the last one here is, did you  
 5 inform the reader in the Freiwald matter or  
 6 anybody reading your report that a classic sign  
 7 of benzodiazepine withdrawal is anxiety such as  
 8 a description that one's heart was about to  
 9 bust?  
 10 **A Well, we talked about Ms. Freiwald having**  
 11 **anxiety. I mean, we -- that's discussed in**  
 12 **here and that it's a nonspecific symptom of**  
 13 **benzodiazepine withdrawal or other. It's not**  
 14 **specific to that though.**  
 15 Q Okay. Continuing on on page 8 of your  
 16 affidavit. You write "A reasonable provider  
 17 would then inquire about Ms. Mixon's prior  
 18 prescriptions and drug usage. A reasonable  
 19 provider would have determined that she was on  
 20 multiple drugs which cause multiple" -- "which  
 21 cause physical dependence and which are  
 22 dangerous if stopped abruptly."  
 23 Which drugs are you referring to as  
 24 being dangerous if stopped abruptly?  
 25 **A Well, specifically in her case, high doses**

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1 benzodiazepine taper." Is that correct?  
 2 **A That is correct.**  
 3 Q And that was required in that case?  
 4 **A That is correct.**  
 5 Q And not required in this case?  
 6 **A That is correct.**  
 7 Q Okay.  
 8 **A Because of the difference in the -- the dosing**  
 9 **and the length of time they had been on it. If**  
 10 **I remember correctly, Mrs. Mixon was obtaining**  
 11 **large quantities of illicit substances.**  
 12 Q Turn to page 32. Are you there?  
 13 **A I am.**  
 14 Q Under paragraph A you write, "It is my opinion  
 15 that each of the CCS nursing staff acted within  
 16 with the appropriate scope of practice and  
 17 exercised appropriate professional nursing  
 18 judgment."  
 19 What is the -- tell me what nursing  
 20 judgment was exercised by Jessica Jones with  
 21 respect to Ruth Freiwald.  
 22 **A So what I said -- what you didn't read was**  
 23 **31 -- at the bottom of page 31, No. 5. She had**  
 24 **a very -- Nurse Ward in her initial report had**  
 25 **a very long, multiple pages, maybe more than a**

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dozen pages of the reason that the nurses did all three of those things, act outside their scope of practice, did not exercise appropriate nursing judgment, and did not act within the standard of care. So there were multiple pages.

And rather -- because I was not retained for the purposes of opining on each one of those actions, I just generally said that having read those things I disagreed that the nurses did any of those three things, acted outside their scope of practice, did not use appropriate professional nursing judgment, and acted within the standard of care.

Q Okay.

A Now, to your question specifically about Nurse Jones, your question was what did she do to --

Q Exercise appropriate professional nursing judgment.

A She reviewed the medications which had been provided by Ms. Freiwald's son and the verifications that had been performed at the pharmacy. She took that information, she spoke with Dr. Fatoki on the phone, relayed information to him, received instructions from

him, and carried out those instructions.

That's all professional nursing judgment.

Q Anything else?

A Not that I can think of at this moment.

Q Okay. You indicate at page 32 under E that "Ms. Freiwald failed to bring her medications when she self surrendered as instructed in the preregistration information."

As I read your report -- I'm not sure exactly where it is -- I thought I saw somewhere that it was your understanding that Ms. Freiwald didn't have to go to jail on the 27th. Is that -- am I stating that correctly, or am I misreading that?

A You're misreading that.

Q Okay. So she did have to report to jail on the 27th?

A Well, it was my understanding of reading the transcript of the sentencing hearing that -- that actually it was her attorney that had suggested that she self report that evening. So it was -- I mean Ms. Freiwald's attorney. She might not have wanted to go to jail that night, but it was her own attorney that suggested that she self surrender that night.

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Q And the Court, in fact, ordered her to jail on October 27th?

A Yes, that is my understanding.

Q All right. So she didn't have a choice as to whether to go to jail?

A No, that was -- that's correct.

Q All right. I just wanted to make sure we were clear on that.

In your opinion are the nurses in this case bound by the NCCHC policies that were in effect in 2016?

MR. SALEMI: Object to form.

THE WITNESS: The answer to your question cannot be answered with a simple yes or no, but the answer is no. You just said bound. So NCCHC is a nonprofit accreditation agency that sets out standards for health services in jails that represent best practices in jails. So they don't set standards of care, so nurses cannot be bound by them to set a standard of care.

BY MR. GAHNZ:

Q Can they --

A Nurses or doctors or anyone else.

Q I'm sorry. I didn't mean to step on your

answer.

A That's okay. I was just saying those standards don't establish a standard of care.

Q Okay. What if the CCS through contract agrees to be bound by those standards? Would that change your answer?

A No. Or likewise, they may have policies, and they I think do have policies that are consistent with those standards. So -- but then your question may be -- your next question might be are they bound to follow every policy. And so a policy violation or not following every policy does not indicate a breach of the standard of care. Those are two different things.

Q So the fact that there's a -- well, have you seen the contract?

A I that it was provided as part of discovery, yes.

Q All right. And would you agree with me that in the scope of services that CCS agreed to provide to Brown County, they agreed that they would -- well --

A I'll accept your characterization.

Q Well, I don't want to give a characterization



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1 because I'll get an objection. I'll give you a  
2 reading.  
3 All right. Showing you what had  
4 previously been marked as Exhibit 61. Okay.  
5 I've highlighted the conditions of performance  
6 and compensation. And just take a look at  
7 that.  
8 **A Okay.**  
9 Q Okay. So based on -- based on the contract  
10 language entered into between CCS and Brown  
11 County, does that change your opinion as to  
12 whether or not CCS was required to follow the  
13 standards set forth in the NCCHC?  
14 **A I thought your -- you just said CCS. And I**  
15 **thought before you said the nurses were they**  
16 **bound to follow the policies. I mean, those**  
17 **are two different questions I guess.**  
18 Q Fair enough.  
19 **A Which is your -- which is your --**  
20 Q Let's start with the nurses.  
21 **A Okay. So because NCCHC policies -- I'm sorry,**  
22 **because NCCHC standards don't set a standard of**  
23 **care, then the nurses are not bound -- that**  
24 **does not determine their compliance with the**  
25 **standard of care.**

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1 **instructions, and yes, she was told she would**  
2 **receive care from her primary providers.**  
3 Q Did Ms. Freiwald have a known serious medical  
4 condition when she entered Brown County Jail?  
5 MS. SCHNEIDER: Object to the form.  
6 MS. DOYLE: I'll join.  
7 **THE WITNESS: I do not believe she**  
8 **did.**  
9 BY MR. GAHNZ:  
10 Q Why is that?  
11 **A Well, I don't believe that she had a medical**  
12 **condition which qualified as a serious medical**  
13 **condition, number one.**  
14 Q Okay.  
15 **A So she was not suicidal. She had chronic**  
16 **hypertension. She had no other urgent medical**  
17 **conditions. So she didn't have them. And to**  
18 **the extent that she -- to the extent that she**  
19 **did have any unknown ones, they were not known**  
20 **to the providers.**  
21 Q The fact that she had attempted suicide in  
22 February in your opinion is not a serious  
23 medical condition?  
24 MS. SCHNEIDER: Object to the form  
25 and foundation.

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1 Q And what about Dr. Fatoki?  
2 **A Same answer.**  
3 Q What about CCS?  
4 **A Well, they have agreed to endeavor to provide**  
5 **care that is consistent with those policies,**  
6 **so -- but evidence in one case that their**  
7 **practices or policies weren't consistent with**  
8 **every single one of those sentences in that**  
9 **book would not indicate a breach of the**  
10 **standard of care.**  
11 And more specifically, as it relates  
12 to the Huber center, not even all of the  
13 policies could apply, because it was a  
14 different environment; the inmates were free to  
15 come and go during the daytime, et cetera.  
16 Q Was Ms. Freiwald ever told that she needed to  
17 go to her own doctor for a blood pressure  
18 check?  
19 **A That information was contained in the Huber**  
20 **preregistration instructions. So I can't say**  
21 **for certain that she or her attorney were**  
22 **provided with those. There is about five pages**  
23 **worth of instructions. And she reported at the**  
24 **right time and to the right place, so I believe**  
25 **more likely than not she did receive those**

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1 **THE WITNESS: Well, I was going --**  
2 **MS. DOYLE: I'll join.**  
3 **THE WITNESS: Well, I was going to**  
4 **say -- I was going to -- I'm not about to be**  
5 **smart-alecky.**  
6 **That sounds like a legal conclusion**  
7 **whether -- I do not consider her conditions or**  
8 **her suicide six months before to be an active**  
9 **medical condition which required urgent action.**  
10 **So, in other words, she did not need to be on**  
11 **suicide watch. But whether the Court**  
12 **determines that to be a serious medical**  
13 **condition or not is something for the Court to**  
14 **decide, not for me.**  
15 BY MR. GAHNZ:  
16 Q So that's outside your area of expertise?  
17 **A No, I didn't say that. I believe that's more a**  
18 **legal term of art than a medical term.**  
19 Q All right. At page 35 of your report under the  
20 first paragraph with the three dots you  
21 indicate that she took a near-fatal dose of  
22 clonazepam. What's your basis for that?  
23 **A That she went unconscious and woke up and**  
24 **hadn't died. I mean -- I mean, she took -- she**  
25 **took enough. She took nine. On the face of it**

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1 **that's a near fatal amount. Number two, she**  
 2 **passed out or went to sleep, and when she**  
 3 **awoke, she had not died. So I know that she**  
 4 **didn't die from it, but it was an amount that**  
 5 **could have killed her.**  
 6 Q Okay. At pages 37, 38, 39 of your report, are  
 7 these all of the data and facts that you  
 8 considered in forming your opinions?  
 9 A **For my -- for my original --**  
 10 MS. SCHNEIDER: I'm just going to  
 11 object as to the word "facts," because I think  
 12 the rest of the -- there's facts in the rest of  
 13 the report. But to the extent it's the  
 14 documents, you can go ahead and answer.  
 15 **THE WITNESS: Would you mind reading**  
 16 **the question again, please, ma'am?**  
 17 (Last question read.)  
 18 **THE WITNESS: Well, I believe these**  
 19 **were the documents that I was provided at the**  
 20 **time of my original Rule 26 report. Of course,**  
 21 **I also relied upon my experience, training, my**  
 22 **20 years of practice of correctional medicine**  
 23 **in forming my opinions, and I was provided**  
 24 **additional materials for my supplemental report**  
 25 **which are listed on that report.**

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1 That is your supplemental report, correct?  
 2 A **That is correct.**  
 3 Q All right. And at pages 1 and 2 this lists the  
 4 items that you reviewed in addition to those  
 5 that are shown at the end of your initial  
 6 report, correct?  
 7 A **That is correct.**  
 8 Q Is there anything else that's not included on  
 9 either pages 37, 38, 39 of your initial report  
 10 and/or pages 1 and 2 of your supplemental  
 11 report that you reviewed in connection with  
 12 your testimony?  
 13 A **Yes.**  
 14 Q What?  
 15 A **Since my supplemental report, I have also been**  
 16 **prescribed -- provided with the County**  
 17 **defendant expert reports which were not**  
 18 **previously provided to me.**  
 19 Q Okay.  
 20 A **And those are three in number. I can tell**  
 21 **you -- do you want me to tell you who they are?**  
 22 Q Yes, please.  
 23 A **Mr. Hayes; Mr. Carter, I believe; and**  
 24 **Dr. Robbins.**  
 25 Q So at page 5 of your supplemental report -- are

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1 BY MR. GAHNZ:  
 2 Q So leaving aside your -- well, leaving aside  
 3 the supplemental report for the time being, are  
 4 there facts or data that you considered by this  
 5 witness that are not included within your -- in  
 6 drafting your initial report which are not  
 7 included in this report?  
 8 A **You said something about a witness. I'm sorry,**  
 9 **I just missed. Can you restate the question?**  
 10 **Maybe I misunderstood.**  
 11 Q That's okay.  
 12 Is there anything that you  
 13 considered in coming to the conclusions that  
 14 you came to in your initial report that is not  
 15 listed on the pages 37, 38, and 39 of that  
 16 report?  
 17 A **Not that I'm aware of at this moment. As I**  
 18 **just told you, I also drew upon my training,**  
 19 **experience, and expertise, but I'm not aware of**  
 20 **any other data I was provided or any other**  
 21 **facts which I considered. I am not aware of**  
 22 **any other data or facts --**  
 23 Q Okay.  
 24 A **-- or documents.**  
 25 Q All right. Why don't you pull up Exhibit 205.

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1 you with me?  
 2 A **I am.**  
 3 Q Item No. 6.  
 4 Did you do any independent  
 5 investigation before you came to the conclusion  
 6 that you agreed with Dr. Daniel that  
 7 clonazepam, which was prescribed at a higher  
 8 dose than she was prescribed in October of  
 9 2016, was stopped abruptly and not tapered  
 10 after her February 2016 suicide attempt without  
 11 significant withdrawal symptoms?  
 12 A **I don't know what your definition of**  
 13 **"independent research or something like that"**  
 14 **is. However, I will tell you what I did, which**  
 15 **was read his opinion, went back and rereviewed**  
 16 **the records that I had and confirmed that that**  
 17 **was, in fact, the case. So I guess that's**  
 18 **independent research.**  
 19 Q Did you review Dr. Greist's testimony?  
 20 A **I did review Dr. Greist's testimony.**  
 21 Q With respect to your conclusion -- or your  
 22 agreement with Dr. Daniel?  
 23 A **If -- I probably did, but I don't recall -- I**  
 24 **don't recall what you're referring to at this**  
 25 **moment if you --**

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1 Q Do you recall Dr. Greist's testimony with  
2 respect to the February cessation of  
3 benzodiazepine?  
4 A **Well, there are a number of experts, and so I**  
5 **don't know that I recall Dr. Greist's separate**  
6 **from the others. So if you want to point me to**  
7 **it, I'll be glad to look at it, but no, I don't**  
8 **recall exactly what his opinion was.**  
9 Q Do you know what happened to Ms. Freiwald after  
10 they took her off of the benzodiazepine in  
11 February of 2016?  
12 A **Yes.**  
13 Q What?  
14 A **Well, she was discharged -- so she was kept in**  
15 **the hospital for two days; she was then sent to**  
16 **a psychiatric facility. When she was**  
17 **transferred to the psychiatric facility, the**  
18 **clonazepam was not continued. It was not**  
19 **continued at the psychiatric facility either.**  
20 **She was discharged from that facility.**  
21 **Approximately two weeks later she**  
22 **went to the emergency department with chest**  
23 **pain and anxiety, and an emergency department**  
24 **physician began another benzodiazepine, Ativan,**  
25 **in a small dose. And she ultimately went to**

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1 BY MR. GAHNZ:  
2 Q Assume all the other facts of the case are the  
3 same, she's not continued on her clonazepam,  
4 she's not continued on her gabapentin, but  
5 she's taken to the main jail for benzodiazepine  
6 withdrawal protocol. Would she have stepped in  
7 front of the truck on November 2nd, 2016?  
8 MS. SCHNEIDER: Incomplete  
9 hypothetical, but go ahead if you can answer.  
10 **THE WITNESS: So that -- that almost**  
11 **is an impossible question to answer.**  
12 **Obviously, if she were taken to the main jail**  
13 **and put on suicide watch, for instance, in a**  
14 **suicide smock, she would not have been out in**  
15 **order to be able to step in front of a truck,**  
16 **so she couldn't have stepped in front of a**  
17 **truck. I believe her condition, her mental**  
18 **condition, would have been much worse, however,**  
19 **if you follow -- if you follow my answer. I**  
20 **mean --**  
21 BY MR. GAHNZ:  
22 Q I do follow your answer. But I'm asking if she  
23 would have been brought back to the jail and  
24 put on the benzodiazepine withdrawal protocol  
25 that Brown County Jail had in place, would she

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1 **Dr. Sheets at Prevea in March, and he stopped**  
2 **that other benzodiazepine, Ativan, and**  
3 **restarted her clonazepam.**  
4 Q Doctor, I want you to assume for me that  
5 Ms. Freiwald was continued on the clonazepam  
6 and gabapentin from October 28th when the meds  
7 arrived at the jail through November 2nd. Do  
8 you have an opinion as to whether she would  
9 have stepped in front of the truck on  
10 November 2nd had she been continued on those  
11 medications?  
12 MS. SCHNEIDER: Just going to object  
13 to the form, incomplete hypothetical, but go  
14 ahead.  
15 **THE WITNESS: So you are -- you're**  
16 **asking me a hypothetical question. We don't**  
17 **know all of the circumstances, but you're --**  
18 **but based upon what you just said, I believe**  
19 **that even had she been continued on those**  
20 **medications, she would have done -- done the**  
21 **suicidal act which she did in February -- just**  
22 **like she did in February while she was on those**  
23 **medications. So, yes, I do have an opinion**  
24 **that she would have.**  
25

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1 have stepped in front of the truck on  
2 November 2nd? Do you have an opinion as to  
3 that?  
4 MS. SCHNEIDER: Asked and answered.  
5 **THE WITNESS: That is the same**  
6 **question you just -- if she was at the Brown**  
7 **County Jail, she wouldn't have been allowed to**  
8 **have Huber privileges, and therefore she**  
9 **couldn't have stepped in front of a truck.**  
10 BY MR. GAHNZ:  
11 Q Okay.  
12 A **However, the judge had ordered that. And I**  
13 **believe her mental condition -- it might well**  
14 **have been below the standard of care to say**  
15 **that she couldn't go and do what the judge**  
16 **ordered and allow her to have Huber privileges.**  
17 **That would have made her worse.**  
18 Q Assume for me that all other facts of the case  
19 being the same but that either Nurse Jones or  
20 Nurse Blozinski had responded to the medical  
21 atten- -- medical slip on 10/28 by going out to  
22 the Huber facility and assessing Ms. Freiwald.  
23 Would they have been able to notice  
24 withdrawal signs as of the 28th?  
25 A **Well, one problem with your hypothetical is I**

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**1 don't believe they received the medical request**  
**2 forms on the 28th. So that's one problem with**  
**3 your hypothetical.**  
 4 Q Okay. So if they received on the 29th -- the  
 5 form on the 28th, if they got it on the  
 6 29th and had seen her that day --  
 7 A **I'm not even sure that -- I'm not sure exactly**  
**8 whether both of them arrived on the same day.**  
**9 I think they responded to -- hold on just a**  
**10 moment.**  
**11 One is responded to on the 29th, and**  
**12 one of them on the 31st, which -- but it was**  
**13 really late on Sunday night. I mean, if you**  
**14 follow what I'm saying, not on the Monday day,**  
**15 but really on the Sunday night shift.**  
 16 Q Right. And what we know that -- is that that's  
 17 when the slip was returned to Ms. Freiwald,  
 18 correct?  
 19 A **That's when it was responded to by the nurses.**  
 20 Q All right. So we know that they had the slips  
 21 in their possession on the 29th and on the  
 22 31st, correct?  
 23 A **That's correct.**  
 24 Q All right. So the hypothetical, then, is  
 25 assuming all other facts are the same, had

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**1 I don't believe she had clinically significant**  
**2 withdrawal symptoms.**  
 3 MR. GAHNZ: Why don't we take a  
 4 five-minute break. I think I'm just about  
 5 done. I just want to review my notes and see  
 6 if there's anything else that I want to cover.  
 7 THE VIDEOGRAPHER: We are off the  
 8 record at 3:12 p.m.  
 9 (Recess taken, 3:12 p.m. to 3:20 p.m.)  
 10 THE VIDEOGRAPHER: We are back on  
 11 the record at 3:20 p.m.  
 12 BY MR. GAHNZ:  
 13 Q Doctor, I'm going to show you what we've  
 14 previously marked as Exhibit 46. Is this one  
 15 of the policies from CCS that you reviewed in  
 16 coming to your conclusions in this case?  
 17 A **It is.**  
 18 Q All right. Was Brown County Jail a facility  
 19 where CCS provided mental health services?  
 20 A **I believe -- it is my understanding that the**  
**21 mental health professionals work for a**  
**22 different entity, not CCS. I wasn't asked to**  
**23 specifically review that contract, and I'm not**  
**24 100 percent certain that I know the answer to**  
**25 that.**

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1 Nurse Jones or Nurse Blozinski gone to the work  
 2 release center on October 29th, would they have  
 3 noticed withdrawal signs of benzodiazepine in  
 4 Ms. Freiwald?  
 5 MR. SALEMI: Show objection, form,  
 6 incomplete hypothetical, assumes facts not in  
 7 evidence.  
 8 MS. SCHNEIDER: Join.  
 9 **THE WITNESS: My opinion is that had**  
**10 they -- had they seen Ms. Freiwald on that**  
**11 date, they would not have, because my opinion**  
**12 is that she did not have clinically significant**  
**13 withdrawal signs and symptoms, so they couldn't**  
**14 have seen them.**  
 15 BY MR. GAHNZ:  
 16 Q Same hypothetical with respect to October 31st.  
 17 Would the -- either Nurse Jones or Nurse  
 18 Blozinski have noticed withdrawal signs had  
 19 they gone out to the work release center --  
 20 MR. SALEMI: Same objections.  
 21 BY MR. GAHNZ:  
 22 Q -- to see Ms. Freiwald?  
 23 MR. SALEMI: Same objections.  
 24 MS. SCHNEIDER: Join.  
 25 **THE WITNESS: Same answer as before.**

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1 Q Did you review this policy, Exhibit 46, as part  
 2 of your -- in order to form the opinions that  
 3 you have in this case?  
 4 A **I did. As I sit here today, I'm not intimately**  
**5 familiar with the details of it. I reviewed it**  
**6 a while -- a while ago, so I'm not familiar**  
**7 with all the details of it at this time.**  
 8 Q All right. I'm going to turn back to what had  
 9 been previously marked as Exhibit 66 and show  
 10 you Article 2 within the scope of services.  
 11 Do you see where the contract  
 12 requires CCS to provide psychiatric services?  
 13 A **Tell me which number again. I'm not --**  
 14 Q I'll highlight it.  
 15 A **I'm --**  
 16 Q No, I'm sorry. It's ridiculously small print.  
 17 A **I wasn't trying to be difficult. I forgot -- I**  
**18 forgot what you were --**  
 19 **Yes, there were -- there was**  
**20 separate mental health providers, but they**  
**21 were, I guess, provided by CCS. I agree with**  
**22 that assessment.**  
 23 Q Okay. So now with that preliminary out of the  
 24 way, you would agree that the policy under  
 25 Exhibit 46 applied to Brown County?



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1 MR. SALEMI: Object to form.  
 2 MS. SCHNEIDER: Join.  
 3 MS. DOYLE: Yeah, I'll join too.  
 4 **THE WITNESS: So I was not -- I did**  
 5 **review the CCS policies. Obviously, I was**  
 6 **mainly reviewing them as it related to**  
 7 **Dr. Fatoki, because that was on whose behalf I**  
 8 **was retained.**  
 9 BY MR. GAHNZ:  
 10 Q Sure.  
 11 A **It was my understanding that this policy is a**  
 12 **general CCS policy and/or -- and are**  
 13 **potentially made specific to each facility. I**  
 14 **do believe -- what I can't remember and what**  
 15 **I'm not sure of, was John Bosch a site person**  
 16 **or a CCS person. If he's a CCS person, then I**  
 17 **don't know if it's specific to Brown County.**  
 18 **If John Bosch is a Brown County person, then**  
 19 **yes, it has been made specific to Brown County.**  
 20 **And I don't know the answer to that question.**  
 21 Q Okay. Leaving that aside, the suicide  
 22 prevention program has a number of components,  
 23 correct?  
 24 A **That is correct.**  
 25 Q And at 3.3 the CCS policy requires staff to

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1 BY MR. GAHNZ:  
 2 Q Okay. That's fair enough.  
 3 Do you see under 3.8, Nonacutely  
 4 Suicidal Inmate? We talked about that  
 5 definition before, correct?  
 6 A **We did. And I said that I did not believe that**  
 7 **applied to Ms. Freiwald.**  
 8 Q Right. Because you thought that it wasn't  
 9 recent?  
 10 A **And she was not expressing current suicidal**  
 11 **ideation.**  
 12 Q Okay. So a little bit farther back in this  
 13 policy one of the things -- at page CCS83.  
 14 A **Okay.**  
 15 Q One of the things that is done is that the --  
 16 there is to be training that zero to seven days  
 17 after admission is a high risk period, correct,  
 18 for suicides?  
 19 A **That is listed as one of the high risk periods**  
 20 **in 5.1.2.**  
 21 Q And another one is that -- after the receipt of  
 22 bad news.  
 23 Would you consider in this case the  
 24 receipt of bad news that Ms. Freiwald is going  
 25 to have to stay in jail and not get the

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1 perform Focus Screening at intake and ongoing  
 2 monitoring to identify potentially suicidal  
 3 inmates throughout the inmate's incarceration,  
 4 correct?  
 5 A **That is what that says.**  
 6 Q And that's CCS staff?  
 7 A **It doesn't say that.**  
 8 Q Is there anything in the documents that you saw  
 9 that would allow Brown County staff to take  
 10 that role of doing the suicide screening?  
 11 A **Well, number one, it's standard procedure in**  
 12 **many jails, if not most jails, in America that**  
 13 **your initial screening, including your initial**  
 14 **suicide assessment, is performed by a trained**  
 15 **correctional officer, not by health care staff.**  
 16 Q And I appreciate that, but is there anything in  
 17 the CCS policy, Exhibit 46, or the contract  
 18 between CCS and Brown County that allows a jail  
 19 staff person to perform the suicide screening?  
 20 MS. SCHNEIDER: I'm just going to  
 21 object, form and foundation.  
 22 **THE WITNESS: The answer is I don't**  
 23 **know. I do not know. I haven't reviewed the**  
 24 **contract or the policy in that detail recently**  
 25 **to be able to give you an answer. I'm sorry.**

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1 electronic monitoring?  
 2 MR. SALEMI: Object to the form;  
 3 presumes an incomplete hypothetical.  
 4 MS. SCHNEIDER: Join.  
 5 **THE WITNESS: Well, presuming --**  
 6 **presuming that that is bad news for a moment --**  
 7 **me -- I'm sorry, I'm telling you back a**  
 8 **hypothetical.**  
 9 **But if you presume that is bad news,**  
 10 **there's no information in the record that**  
 11 **indicates that anybody at the Brown County Jail**  
 12 **or CCS staff or Dr. Fatoki knew that, knew that**  
 13 **she had -- that she was expecting to go home**  
 14 **after one night or received bad news that she**  
 15 **was going to have to stay. As far as the**  
 16 **information in the record only suggested that**  
 17 **she was sentenced to 45 days. All of that**  
 18 **other information came out from other people**  
 19 **and after the fact.**  
 20 BY MR. GAHNZ:  
 21 Q Elsewhere in your report you're indicating that  
 22 the triggering event was more likely the fact  
 23 that she had learned that she wasn't going to  
 24 get out of jail; is that correct?  
 25 A **That is correct.**

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1 Q All right. So would you consider based on your  
2 report that this was bad news that Ms. Freiwald  
3 had received?  
4 **A I didn't characterize it one way or the other.**  
5 **But as I said, if you presume it is bad news, I**  
6 **don't see any evidence that anybody else at the**  
7 **Brown County Jail or CCS or Dr. Fatoki knew**  
8 **about that.**  
9 Q Well, do people normally commit suicide after  
10 receiving good news?  
11 MS. SCHNEIDER: Object to the form.  
12 MR. SALEMI: It sounds  
13 argumentative, and it's an incomplete  
14 hypothetical.  
15 **THE WITNESS: I don't know how to**  
16 **provide an answer to that.**  
17 BY MR. GAHNZ:  
18 Q All right. Another high risk is "inmates with  
19 mental illness, including depression or bipolar  
20 disorder."  
21 Did Ms. Freiwald have depression?  
22 **A She did.**  
23 Q Okay. "Inmates who have a personal history of  
24 suicide attempts, especially when those have  
25 occurred while incarcerated."

1 Did Ms. Freiwald have a history of  
2 suicide attempt?  
3 **A She did have that, but not while incarcerated.**  
4 Q Under 5.2.1 it provides that "Potential suicide  
5 risk is initially evaluated through observation  
6 and interview questions during the receiving  
7 screening."  
8 Did anybody at CCS do that?  
9 **A She had a thorough suicide screening.**  
10 Q Did anybody at CCS do that screening?  
11 **A I believe it was performed by the trained**  
12 **correctional officers.**  
13 Q Did anybody at CCS review that screening at any  
14 point during her incarceration?  
15 **A So it was my understanding that the nurse only**  
16 **received the receiving screening after**  
17 **Ms. Freiwald had been transferred to the Huber**  
18 **center. And so the -- I believe that all of**  
19 **the nurses testified that they did not review**  
20 **those receiving screenings typically that**  
21 **were -- I'm sorry, not the receiving**  
22 **screenings -- the suicide screenings that were**  
23 **done.**  
24 Q Right. The receiving screening is a different  
25 document than the suicide screening?

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1 **A That's correct. They're two different**  
2 **documents. So I misspoke.**  
3 Q That's okay.  
4 **A The nurses -- the nurses said that they did not**  
5 **review the suicide screening of the -- that**  
6 **were done by the correctional officer.**  
7 Q At 5.41 they talk about evaluation and  
8 treatment, correct?  
9 **A That's correct.**  
10 Q What is a QMHP?  
11 **A Qualified mental health professional.**  
12 Q And that person is to determine the level of  
13 suicide risk and level of supervision needed;  
14 is that correct?  
15 **A Well, not for every inmate. I mean, this is --**  
16 **this is one step in a process. So one would**  
17 **have to identify a risk of suicide such that**  
18 **some process would have been started. So, no,**  
19 **a QMHP does not see every inmate.**  
20 Q And in Ms. Freiwald's case she was identified  
21 as a suicide potential, correct?  
22 **A I don't believe that is the case. I believe --**  
23 **I believe that's what the form -- the computer**  
24 **said that, but I don't believe that -- based on**  
25 **the responses that she provided, that she was**

1 **at suicide risk.**  
2 Q So who other than the form -- well, back up.  
3 The -- did anybody evaluate the  
4 suicide risk evaluation to determine whether or  
5 not Ms. Freiwald was a suicide risk?  
6 **A I believe the trained correctional officer did.**  
7 Q Anybody -- but nobody from CCS, correct?  
8 **A I'm not aware of it if they did.**  
9 Q And the -- at least based on the information in  
10 the offender management system, she was  
11 identified as a potential suicide?  
12 MS. DOYLE: I'm going to object to  
13 form.  
14 MR. SALEMI: Yeah, object to form.  
15 Misstates the evidence.  
16 MS. SCHNEIDER: Join.  
17 MS. DOYLE: I'll join that too.  
18 **THE WITNESS: So I believe the**  
19 **answers that she provided did not show that she**  
20 **was at risk for suicide. I understand that the**  
21 **computer generated that wording at the top, but**  
22 **I don't believe that was generated by a person.**  
23 BY MR. GAHNZ:  
24 Q Okay. You were not there to say, "Brown  
25 County, based on these answers, Ruth Freiwald

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1 is not a suicide risk." Fair enough?

2 **A I only reviewed her responses in hindsight.**

3 Q And the only information that was out there was

4 what the computer had said with respect to the

5 risk of suicide based on the answers to the

6 questions, correct?

7 **A No. I mean, I disagree with that. What**

8 **information was out there was what Ms. Freiwald**

9 **said in response to the questions.**

10 Q Okay. At page 87 of that same standard -- CCS

11 policy, do you see under 5.63 at the -- at the

12 bottom of the page the listing of who is

13 considered a high risk patient? It starts the

14 last sentence there, "High risk patients

15 include," colon?

16 **A Yes.**

17 Q Okay. And so "Admitted to jail on suicide

18 watch directly from an inpatient psychiatric

19 unit or inpatient medical stay due to suicide

20 attempt in the community."

21 That was not Ms. Freiwald, correct?

22 **A That is correct.**

23 Q "Placed on suicide watch due to making a

24 suicide attempt in jail."

25 That was not Ms. Freiwald, correct?

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1 Q Okay.

2 **A The medical screening -- just one moment,**

3 **please. I wanted to see -- it has no mention**

4 **of her prior suicide attempt. So, in other**

5 **words, it's not in that document.**

6 Q Sure.

7 **A It was only in response to the questions on the**

8 **suicide screening.**

9 Q Okay.

10 **A And I'm not aware that any CCS employee was**

11 **aware of the answers to that. That was -- that**

12 **was taken by and acted on by the correctional**

13 **officer.**

14 Q Fair enough. But based on the -- on the policy

15 that CCS had in place, you would agree that

16 Ms. Freiwald was considered a high risk for

17 suicide?

18 **A I agree that she met one of those criteria on**

19 **that. I don't necessarily agree that she**

20 **was -- met the cri- -- that she was a high risk**

21 **for suicide. And she was not even at that**

22 **facility. She had been transferred to another**

23 **facility.**

24 Q She was still in the custody of Brown County,

25 correct?

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1 **A That's correct.**

2 Q "Documented suicide attempt within the prior 12

3 months."

4 That was, in fact, Ms. Freiwald,

5 correct?

6 **A She did meet that criteria, yes.**

7 Q Okay. And was anything done by any employee of

8 CCS with respect to the fact that Ms. Freiwald

9 was a high risk for suicide based on their

10 policies?

11 MR. SALEMI: Hold on. Could you

12 read that one again, please?

13 (Last question read.)

14 MR. SALEMI: Object to form.

15 MS. SCHNEIDER: Join.

16 MR. SALEMI: Assumes facts not in

17 evidence.

18 **THE WITNESS: I'm sorry, I need to**

19 **review a document.**

20 BY MR. GAHNZ:

21 Q That's okay.

22 **A What I was reviewing just now was HRVACCS3.**

23 Q Which -- what's the title of that document?

24 **A Booking Observation Report. The medical**

25 **screening.**

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1 **A She was.**

2 Q Under 3.8.

3 **A This is still on this Exhibit 46?**

4 Q Right. Page 82.

5 **A Okay. Okay. You said 3 point which?**

6 Q 3.8.

7 **A 8. Okay.**

8 Q Nonacutely Suicidal Inmates, which is, in

9 parenthetical, individuals who express current

10 suicidal ideation without a specific threat or

11 plan, have a recent history of self-destructive

12 behavior, or deny suicidal ideation but

13 demonstrate other concerning behavior

14 indicating the potential for self-injury, are

15 placed on watch and monitored on a staggered

16 schedule with no more than 15 minutes between

17 checks.

18 Did that -- was that the policy that

19 Brown County had in place with respect to

20 nonacutely suicidal inmates?

21 **A I believe that it is.**

22 Q And was that done on -- for Ms. Freiwald?

23 **A No, I don't believe Ms. Freiwald met that**

24 **criteria, that definition there, and I don't**

25 **believe that it either was done or should have**

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1 **been done.**

2 Q Okay. Even though based on CCS policy, she was

3 a high risk of suicide because she had

4 attempted a suicide within the 12 months prior

5 to her incarceration?

6 MS. SCHNEIDER: Object to the form.

7 It misstates his prior testimony.

8 MR. SALEMI: I join.

9 **THE WITNESS: That's your**

10 **characterization of it. I said that she met**

11 **one criteria. I did not agree that she was at**

12 **high risk of suicide.**

13 BY MR. GAHNZ:

14 Q Well, my question wasn't whether you thought

15 she was at high risk of suicide.

16 A **Okay --**

17 Q My question was, did she meet the definition

18 set forth by CCS as a high risk for suicide?

19 MR. SALEMI: Object to form. That

20 wasn't the question.

21 MS. SCHNEIDER: Join.

22 BY MR. GAHNZ:

23 Q Well, that is the question now.

24 Can you answer that question, sir?

25 And, again, it's at --

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1 unless somebody else has more questions.

2 MS. SCHNEIDER: I just have one

3 clarification.

4 EXAMINATION

5 BY MS. SCHNEIDER:

6 Q Doctor, you were asked a lot of questions about

7 Exhibit 209, which was your affidavit in the

8 Mixon case. Were the -- can you tell us

9 whether or not the circumstances in the Mixon

10 case were similar to the circumstances in the

11 Freiwald case?

12 A **No. They're entirely different.**

13 Q And did you adequately summarize the

14 differences between that case and this case

15 earlier in your deposition, or is there

16 something you would like to add to that?

17 A **Well, I think I did summarize it, but I will**

18 **say that they were entirely different in that,**

19 **number one, that jail had no medical staff at**

20 **all. And Ms. Mixon was very sick with opiate**

21 **withdrawal including severe vomiting and**

22 **diarrhea for a number of days before she**

23 **suddenly died of a seizure. So I think those**

24 **are entirely different circumstances than this**

25 **case.**

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1 A **I'm going to go over to it.**

2 **My read -- it's on 87, at the bottom**

3 **of 87 and at the top of 88. "High risk**

4 **patients include," and then it has certain --**

5 **it has five bullets. Four of them do not**

6 **apply. One of them, documented suicide attempt**

7 **in the prior 12 months, does apply in her case**

8 **in hindsight. I don't agree that either CCS --**

9 **that any of the employees knew that or that she**

10 **was or should have been put in that category**

11 **even had they known that. It says include. It**

12 **doesn't say must. That's just examples.**

13 Q Okay. Based on CCS Policy No. OPS-100-G05, did

14 Ms. Freiwald meet the definition of a high risk

15 for suicide inmate?

16 MR. SALEMI: Object to form.

17 **THE WITNESS: I don't believe so.**

18 **This is not giving a definition. It just**

19 **says -- giving examples of who could be high**

20 **risk patients. So I don't believe she was high**

21 **risk. And she met one criteria, and that**

22 **criteria the CCS employees didn't know anything**

23 **about, so no, I don't believe that that**

24 **qualifies her as a high risk patient.**

25 MR. GAHNZ: All right. We're done

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1 MS. SCHNEIDER: Okay. Thank you.

2 THE VIDEOGRAPHER: This is the end

3 of today's deposition of Dr. Thomas Fowlkes.

4 We are off the record at 3:42 p.m. This is the

5 end of disc number four.

6 MR. GAHNZ: We're going to copy 203

7 and provide you with a copy to add to the

8 original. Exhibits 204 and 205 which were

9 contained within Exhibit 203 have been taken

10 out and marked separately for ease of reference

11 down the line. Those will be copied as

12 Exhibits 204 and 205 and not included in 203.

13 Maria is going to take control of

14 Exhibit 203 and return it to Dr. Fowlkes after

15 copying.

16 Is that correct, everybody?

17 MS. SCHNEIDER: That's correct. And

18 the rest of the exhibits will go with the court

19 reporter.

20 **THE WITNESS: Yes. And I have one**

21 **more comment on the record. What about reading**

22 **and signing?**

23 MR. GAHNZ: That's not a Wisconsin

24 thing.

25 (Discussion off the record.)



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1 STATE OF WISCONSIN )  
 ) SS:  
2 COUNTY OF MILWAUKEE )  
3

4 I, Sarah A. Hart, RPR, RMR, CRR and  
5 Notary Public in and for the State of  
6 Wisconsin, do hereby certify that the preceding  
7 deposition was recorded by me and reduced to  
8 writing under my personal direction.

9 I further certify that I am not a  
10 relative or employee or attorney or counsel of  
11 any of the parties, or a relative or employee  
12 of such attorney or counsel, or financially  
13 interested directly or indirectly in this  
14 action.

15 In witness whereof, I have hereunder  
16 set my hand and affixed my seal of office on  
17 this 31st day of January, 2020.  
18  
19  
20  
21

22 \_\_\_\_\_  
SARAH A. HART, RPR/RMR/CRR

23 Notary Public

24 In and for the State of Wisconsin

25 My commission expires October 9, 2023.